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IN THE

SUPREME COURT OF THE UNITED STATES

MARCH TERM, 1967.

No. 1239

JACKSON COUNTY PUBLIC WATER SUPPLY DISTRICT No. 1,
Petitioner,

vs.

ONG AIRCRAFT CORPORATION, CITY OF KANSAS CITY, MISSOURI, ILUS W. DAVIS, Successor to H. Roe Bartle, Mayor of Kansas City, Missouri, HUGH G. CARR, Director of Water, Kansas City, Missouri, and EARL BROSNAHAN,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE KANSAS CITY COURT OF APPEALS OF THE STATE OF MISSOURI

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE KANSAS CITY COURT OF APPEALS

Jackson County Public Water Supply District No. 1 ("District") prays that Writ of Certiorari issue to review the judgment of the Kansas City Court of Appeals entered in the above-entitled case on October 3, 1966.

OPINIONS BELOW

The Memorandum Opinion of the Judge of the State Trial Court is unreported and is printed in Appendix B hereto.

The Opinion of the Kansas City Court of Appeals printed in Appendix A hereto, is reported at 409 S.W.2d 226 (Mo. App. 1966).

JURISDICTION

The judgment of the Kansas City Court of Appeals of Missouri was entered on October 3, 1966. Motion for rehearing was denied on December 5, 1966 (Appendix C). A Motion to Transfer to the Supreme Court was filed on January 4, 1967, and denied January 9, 1967 (Appendix D); and thereafter a Motion for Rehearing and Reconsideration on the denial of the Motion for Transfer was tendered and leave to file requested on January 19, 1967 (Appendix E). That Motion for Leave to file was denied on January 20, 1967 (Appendix F), on which date the Judgment and Opinion of the Kansas City Court of Appeals being the court of last resort became final. Jurisdiction of this Court is invoked under 28 U.S.C., Section 1257 (3).

QUESTIONS PRESENTED

The question presented is whether a major charter city of the State of Missouri can invade the territory of an adjacent Federally financed rural water district and own, operate and maintain a competitive water system in said district to the detriment of the revenue bonds issued by that public rural water district.

This question is one of imperative public importance because it affects many similarly situated public water dis-

tricts within the State of Missouri, many of which rural water districts are federally financed through the Farm Home Administration which guarantees the revenue bonds of said rural water districts.

An additional question presented is whether the constitutional rights of a federally financed public water district and its members are impaired by an invasion of that district by an adjacent municipality, thereby reducing the district's revenue earning area and bringing about higher costs and thereby higher rates to the individuals and simultaneously placing the district in an ineligible category for further federal financing.

CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provisions involved are the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States, U.S.C.A., Const. Amend. XIV, Section 1, which Amendment provides as follows:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, within its jurisdiction the equal protection of the laws."

and Article VI of the Constitution of the United States which provides:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby; any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

The statutes involved are:

91.020, Revised Statutes of Missouri, 1959.

91.050, Revised Statutes of Missouri, 1959.

The Agricultural Act of 1961, U.S.C.A., Title 7, Section 1926, Public Law 87-128, Section 306.

U.S.C.A., Title 42, Section 1492, Public Law 87-70.

The cases involved are:

Jackson County Public Water Supply District No. 1 v. *Ong Aircraft Corporation, et al.*, 409 S.W.2d 226 (Mo. App. 1966).

Taylor v. *Dimmitt*, 78 S.W.2d 841 (Mo. Sup. 1934).

Spencer, Elbert F. v. *Village of Dekalb, Mo.*, 408 S.W.2d 78 (Mo. S. Ct. 1966).

STATEMENT

Kansas City, Missouri ("City") on October 18, 1962, entered into a contract with the Ong Aircraft Corporation (Appendix E) (R. Exhibit 14) by which it agreed to have constructed, own, maintain and operate a water system in the subdivision known as Crossgates, an 80-acre tract straddling the south city limits line and the north District line at 119th Street in Jackson County, Missouri. Approximately 40 acres of said subdivision was located inside of Kansas City, Missouri, and the south 40 acres was located within the boundaries of the petitioner and south of and outside of the city limits lines.

Immediately upon the commencement of construction of the part of the water system outside of the city limits and within the petitioner's area, the District brought action in the Circuit Court of Jackson County at Independence to restrain and enjoin the construction, ownership, maintenance and operation claiming and contending that such an

invasion would be contrary to the law of Missouri and would endanger the revenue bonds of the District then outstanding or new ones which might be later sold.

A temporary restraining order was initially issued. Thereafter a temporary injunction was issued and remained in force until April 9th, 1963, at which date that injunction was dissolved.

The litigation continued on the prayer for a permanent injunction and the construction which had been nearly completed under agreements of the parties was hooked up and since said date has been owned, maintained and operated by Kansas City, Missouri.

On the 14th day of August, 1963, the Circuit Court, being the Trial Court in Missouri, issued its judgment (Appendix B) (R. 357-363) denying the injunction and after the usual after-trial motions appeal was taken to the Supreme Court of Missouri, transferred to the Kansas City Court of Appeals and the decision to which this Petition for Certiorari is directed was rendered. That decision affirmed the Trial Court's decision and among other things held that under the provision of Section 91.050, R.S.Mo., 1959 (Appendix G), a city such as Kansas City, Missouri, was legally entitled to own, operate and maintain a water system beyond its boundaries for service to persons in other municipalities. At all times during the pendency of this action there was in force and effect a decision of the Supreme Court of Missouri entitled *Taylor* v. *Dimmitt*, 78 S.W.2d 841 (Mo. 1934), which held that a municipality such as Kansas City, Missouri, could not legally own, operate and maintain an electric power system outside of its boundaries under the provision of Section 91.020, R.S.Mo., 1959 (Appendix G), an identical statute except for the words "power system" as against "water system."

This decision was called to the attention of the Kansas City Court of Appeals in petitioner's Motion for Rehearing before its decision became final and was likewise called to the attention of the Supreme Court of Missouri in the Application to Transfer and the Motion for Reconsideration before the decision of the Kansas City Court of Appeals became final. Because of said decision it was at all times the belief of the District, the petitioner herein, that such action, on behalf of Kansas City, Missouri, and cities similarly located adjacent to and supplying rural water districts, would not be permitted.

Therefore, it was not until the Supreme Court denied the motion to transfer the decision from the Kansas City Court of Appeals that petitioner thought there would be any doubt but that the Missouri Supreme Court would require the Kansas City Court of Appeals to follow its earlier decision and hold that rural water district revenue bonds should not be endangered by an illegal invasion of their territory by the larger cities having their own water supply and furnishing it to the adjacent districts.

The detrimental effect upon its revenue bonds of a water district being invaded by a municipality was described to the trial court by Mr. Mark Lucas, an investment underwriter of many years experience, and that testimony was not controverted. See Appendix K (R. 189-192) from the original transcript in the case, the summary of which testimony is described in Appendix A, page A8. The detrimental effect described by Mr. Lucas of an invasion of a federally financed quasi-public water system area by another municipality has been declared expressly illegal as a matter of public policy by the provisions of Public Law 87-128, Section 306, Subsection (b).

Petitioner raised both constitutional and statutory rights at the trial stage in the lower court, as evidenced

by the trial judge's conclusion number 6 which stated (R. 362):

> "No constitutional or statutory rights of the plaintiff have been violated or impaired by any contracts, agreements or the conduct of the defendants or any of them."

It is obvious from the above that at that time petitioner was arguing violation of constitutional rights although it must be frankly admitted that petitioner was unaware of the existence of Public Law 87-128, Laws of the 87th Congress, First Session, entitled The Agricultural Act of 1961, 7 U.S.C.A., Sec. 1926, or the amendment of that act which later occurred in 1965, and was unaware of Public Law 87-70 (Chapter 8B) otherwise known as 42 U.S.C.A., Section 1492, adopted in 1961 and amended in 1962, 1964 and 1965. The reasons that the specific Federal grounds presented in this Petition for Certiorari were not more specifically argued in the state proceeding are as follows:

A. It will be noted that the foregoing has described a typical "surprise" decision situation wherein this Court has granted certiorari where the Federal question is raised for the first time in the petition for certiorari. This exception is permitted as in this case where the Federal issue is born in the surprise and summary failure of the highest State Court to require the last resort intermediate court to follow the highest court's decision by denying a transferring or rehearing motion.[1]

B. Strangely enough, the trial court and the Kansas City Court of Appeals were well aware of the fact that petitioner, the District, was Federally financed (Appendix H, R. Exhibit 13). True, until the "surprise" decision of

1. *Saunders* v. *Shaw*, 244 U.S. 317, 320 (37 S.Ct.Rep. 638).

the Missouri Supreme Court in denying transfer, petitioners were concentrating on protecting the individual constitutional rights of its resident members as United States citizens and were unaware of the disastrous effect it might have upon other districts and the United States Government.

C. In addition, this case commenced in 1962. Since that date the Federal program has drastically changed and been expanded. The Federal question has arisen and become acute simultaneously with the trial and argument of this case in the Missouri courts (See Argument Reason No. 1, *infra*).

REASONS FOR GRANTING THE WRIT

1. The United States, through its Farmers Home Administration who has financed water districts by the guaranty of their revenue bonds and through its Housing and Home Finance Administration who has financed water districts by the loaning of money and the purchase of securities of water districts, is precariously in the position of seeing those districts in Missouri detrimentally affected and their area and fiscal security diminished.

The Agricultural Act of 1961, Public Law 87-128, provides in part as follows, Section 306, Subsections (a) and (b):

> "(a) The Secretary is also authorized to make or insure loans to associations including corporations not operated for profit and public and quasi-public agencies to provide for the application or establishment of soil conservation practices, the conservation, development, *use and control of water* and the installation or improvement of drainage facilities, all primarily for serving farmers, ranchers, farm tenants, farm laborers and rural residents and to *furnish financial*

assistance or other aid in planning projects for such purposes. No such loans shall be made or insured which would cause an association's unpaid principal indebtedness under this Section and the Act of August 28, 1937, as amended, to exceed $500,000 in the case of direct loans and $1,000,000 in the case of insured loans at any one time.

"(b) The service provided or made available through any such association shall not be curtailed or limited by inclusion of the *area* served by such association within the boundaries of any municipal corporation or other public body or by the granting of any private *franchise for similar service within such area* during the term of such loan; nor shall the happening of any such event be the basis of requiring such association to secure any franchise, license or permit as a condition to continuing to serve the area served by the association at the time of the occurrence of such event." (Emphasis added).

U.S.C.A., Title 42, Section 1492 (b) (1), Public Law 87-70 and amendments, provides for the making of loans or the purchase of securities of local, urban political subdivisions by the Housing and Home Finance Administrator and, among other provisions, states: "All securities and loans made shall be of sound value or so secured as to assure retirement or repayment." Section 306, Subsection (b) of Public Law 87-128, quoted above, well defines the activities which would render a security or loan "unsecured" or of "unsound value".

Petitioner is federally financed and has been since 1937 by a Public Works Administration grant in the sum of $136,462.42 (Appendix H) (R. Exhibit 13), which amount has since it was granted been carried on the books of the petitioner and is at the present time so carried (See Appendix J, a copy of the petitioner's last audited statement). The petitioner is likewise eligible because of its peculiar location

and characteristics to additional financing either through the Farmers Home Administration by means of additional grants or guaranties for additional revenue bond issues or is eligible for additional financing through the purchase of its securities and obligations by or through loans from the Housing and Home Finance Administration under U.S.C.A., Title 42, Section 1492, paragraphs (a), (b) and (c). The HHFA has similar powers in urban areas as those given to the Farm Home Administration in rural areas.

Other water districts in Jackson County, Missouri, surrounding the cities of Kansas City, Missouri, Lee's Summit and Blue Springs are at present federally financed in the following manner and extent.

Jackson County Public Water District No. 13 has a revenue bond issue of $545,000 which has been guaranteed by the United States through the Farmers Home Administration and is adjacent to and may be encroached upon by the City of Lee's Summit from the west and the cities of Blue Springs and Grain Valley from the north.

Jackson County Public Water District No. 14 near the city of Lee's Summit, Missouri, has a revenue bond issue of $144,000 guaranteed by the United States through the Farmers Home Administration and is adjacent to and subject to encroachment by Lee's Summit from the west.

Jackson County Public Water Supply District No. 8 near the cities of Independence and Blue Springs has applied for a guarantee of a revenue bond issue by the United States through the Farmers Home Administration and is adjacent to and subject to encroachment by Blue Springs and Independence, Missouri.

Similar public rural water districts located in the Counties of Platte and Clay, State of Missouri, are adjacent to Kansas City, Missouri, and other cities having and fur-

nishing their water supply to said districts and said districts are subject to being encroached upon in the same manner as petitioner has been by Kansas City, Missouri.

In addition to the districts similarly situated and within the immediate area occupied by petitioner, there are many districts adjacent to and surrounding the St. Louis, Missouri, area; Columbia, Missouri and the other larger cities in Missouri. All are similarly federally financed by the guarantee of their revenue bonds by the United States through the Farmers Home Administration Department of Agriculture and detrimentally affected by potential encroachment permitted under the decision complained of.

Based upon information furnished by the Missouri Director of FHA, Department of Agriculture, Columbia, Missouri, there are approximately 87 rural water districts within the State of Missouri similarly situated as petitioner and having outstanding revenue bonds eligible for financing guaranteed by the United States.

Supported by information from Howard Bertsch, Administrator, Farmers Home Administration, Washington, D.C.:

> "The rural community water system program has rapidly gained momentum since 1961. The number of projects financed each year through F.H.A. rose from 33 in fiscal 1961 to nearly 400 in fiscal 1965.
>
> "Last year (1965) Congress again extended the authority. It raised the population limit on rural communities served to 5,500 and the cost limit on a single project from $1,000,000 to $4,000,000. It authorized grants combined with loans when necessary to build systems not so burdened with debt that their charge for service would be beyond the means of rural people in modest circumstances.

* *

"As now funded, programs authorized in 1965 and made operative in 1966 open the way for the F.H.A. to support about 1,000 projects a year within the nation's massive new effort to clear up its water problem. * * *

"* * * F.H.A. will make about 600 approvals for the fiscal year 1966 but local interest and initiative are enormous and when the 1966 fiscal year ends it is expected that about 3,000 project applications that are in some state of active processing will carry over into the fiscal year 1967,—projects representing $600,000,000 worth of progress in rural areas. * * *"[2]

Missouri's share of these applications, grants and guarantees is estimated to be 25 in number of projects in existence representing $13,000,000 in guaranteed financing and many applications pending representing several million dollars to be either granted or guaranteed through the Farmers Home Administration (See Appendix I).[3] As a matter of fact, in 1966, Missouri, in the list of states using FHA guaranties, was second only to Texas for the largest number and amount of grants and guaranties; and in the fiscal year 1967, Missouri is the leading state in such grants and guaranties.

All of these existing and prospective grants or guaranties by the United States are subject to being detrimentally affected by the encroachment of adjacent cities under the decision of the Kansas City Court of Appeals complained of in this petition. Said decision has ruled that it is legal (despite the ruling of the Missouri Supreme Court in *Taylor* v. *Dimmitt*) for a city to invade an

2. A paper presented on May 25, 1966, at the Annual Conference, Bal Harbour, Fla., by Howard Bertsch, Administrator, Farmers Home Administration, Washington, D.C.

3. From information furnished by J. Edw. Jose, State Director, and Neil T'se, Chief of Community Service, Farmers Home Administration, Parkade Plaza, Columbia, Missouri.

adjacent rural public water supply district and own, maintain and operate a water system therein thereby diminishing and cutting up a territory upon which said water district relies in order to repay its revenue bonds.

As pointed out in the foregoing reason, the petitioner has been Federally financed since 1937 by a large Public Works Administration grant. The petitioner is equally eligible for additional financing under a recently changed and ever-changing and expanding Federal policy for financing rural and urban political subdivisions. The present program consists of grants, loans, guaranties and purchases of securities. The decision of the Kansas City Court of Appeals, concerning which this petition is filed, has said that it is perfectly legal under a Missouri statute for an adjacent municipality to invade the Federally-financed political subdivision and therein own, operate and maintain a competing system.

The Kansas City Court of Appeals opinion is directly in the face of a Supreme Court of Missouri decision which said that it was illegal for a neighboring municipality to invade another municipality and therein own, operate and maintain an electric power system. It might appear from that decision that the Missouri Courts have held that there is a marked distinction between the two cases simply because one affects a power system and the other a water system. Petitioner does not think this is the Supreme Court's ruling because the *Taylor* v. *Dimmitt* decision (involving electric power) was presented, argued and discussed in connection with a recent water decision. See *Spencer* v. *Village of Dekalb*, 408 S.W.2d 78 (Mo. S. Ct. 1966), a case involving a water system. The Dekalb opinion of the Supreme Court left the *Taylor* v. *Dimmitt* decision untouched and unchanged and thereby gave it a recent affirmance.

It is evident from this petition that Missouri is now the outstanding State beneficiary of Federal financing involving the guarantee of revenue bonds. The statement also discloses that there is in excess of $13,000,000 of such guaranties presently outstanding. The decision complained of completely disregards the effect it might have upon such Federal financing. The exact reasons that brought about the Federal prohibition against the invasion of a Federally financed water district were presented to the Kansas City Court of Appeals, and in denying the injunction sought by petitioner and thereby condoning the action of the invading municipality, the Court of Appeals decision has set a precedent that endangers the United States guaranties that are presently outstanding.

It might be conceivably argued that if the Missouri courts had been presented with the Federal statutory prohibition of the Agricultural Act of 1961 in a case involving a water district whose revenue bonds had been federally guaranteed, that the courts would have reached an opposite result than that reached in the case at bar. This argument is not impressive when one considers that the Missouri courts were dealing with exactly the same facts (and justified the municipal encroachment) as the facts which caused Congress to pass the Agricultural Act of 1961 and declare that such a municipal encroachment is illegal.

The facts we are discussing are as follows:

1. A "service provided or made available through" the District;

2. The curtailment or limitation of that service by inclusion of the area served (41.59 acres—177 lots) within the boundaries of the Kansas City water system service;

3. The "granting of private franchise for similar service within such area" by means of the October 18, 1962, contract.

It will be noticed that this fact statement paraphrases the prohibition of Section 306(b) of the Agricultural Act. The Missouri state courts were well advised that petitioner was Federally financed. This should have alerted the state courts that supplementary applications for similar or additional financing might follow, whether it be for grant, guaranty or loan. The above facts should make it clear that the Federal legislative expression of the Agricultural Act is merely an expression of policy which is diametrically opposed to and absolutely contrary to the policy as expressed by the Kansas City Court of Appeals decision on the identical set of facts.

Therefore, the question that would arise in a subsequent case in which a guaranteed revenue bond was expressly involved would be, is the Missouri court going to follow the public policy as expressed by the Kansas City Court of Appeals decision or the public policy expressed by the Federal Public Law. It is for this reason that this Court should ask that the record on this State proceedings be forwarded to it and that the Missouri courts be instructed what policy should be followed. The importance of this is emphasized by the fact that Missouri, among all the states, is the dominant user of these Federal privileges.

2. The petitioner and its members, who are all citizens of the United States, are directly detrimentally affected in much the same way that the Federal government is affected as shown under reason number 1 above. The effect of the Kansas City Court of Appeals decision on the individuals and the political subdivisions of which they are a member is a direct and damaging effect while the effect

upon the Federal government is secondary or as guarantor but equally as damaging.

The constitutional rights of the individuals are impaired when the area of their water district is reduced by an invading municipality by an increase in rates resulting from the fact that less revenue is obtainable to pay the district's costs. The Kansas City Court of Appeals' decision, besides justifying the reduction of the petitioner's area, and therefore its earning power, has actually disenfranchised the petitioner and its members of the benefit of future Federal financing. The Public Federal Laws referred to in the statement empower the administrators of the FHA and the HHFA programs to finance only "secured" and "sound value investments". The Federal Public Laws define what is meant by "secured" or "sound value investments" and by permitting the violation complained of in this case, the Kansas City Court of Appeals has removed the petitioner's bonds and future bonds from the area of qualifying investments. This has occurred to petitioner and its U. S. citizen members without reference to the effect the decision might have had on water districts similarly situated and their members and without reference to the effect upon the Federal Government's guaranties. These are rights which are guaranteed to the members of the petitioning water district by the Fourteenth Amendment to the Constitution.

CONCLUSION

The decision of the Kansas City Court of Appeals has violated Article VI of the United States Constitution and in so doing has put in jeopardy the guaranties of the United States Government to the extent of at least $13,000,000. We think this is sufficient basis for a writ of certiorari to the Kansas City Court of Appeals asking that it forward

its record to the United States Supreme Court. But this decision has gone further in that it has in effect deprived the 5,000 water customers and members of this water district of future grants or future guaranties or future loans by the Federal government by its approval of a physical situation which renders the district's securities unsuitable for federal financing. This is an impairment of the Constitutional rights of those United States citizens contrary to the Fourteenth Amendment of the United States. This in itself is likewise sufficient ground for the issuing of this Court's writ.

Respectfully submitted,

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APPENDIX A

Opinion of the Kansas City Court of Appeals

IN THE KANSAS CITY COURT OF APPEALS
OCTOBER SESSION, 1966

JACKSON COUNTY PUBLIC WATER SUPPLY DISTRICT No. 1,
Appellant,

vs.

ONG AIRCRAFT CORPORATION, a Corporation, CITY OF KANSAS CITY, MISSOURI, ILUS W. DAVIS, Successor to H. Roe Bartle, Mayor of Kansas City, Missouri, HUGH G. CARR, Director of Water, Kansas City, Missouri, and EARL BROSNAHAN,
Respondents.

No. 24,337

APPEAL FROM THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

The appellant, Jackson County Public Water Supply District No. 1, was organized under Chapter 247 (all statutory references are to R.S. Mo. 1959 and V.A.M.S., unless otherwise indicated), for the purpose of furnishing water to users within its district. The respondents are the City of Kansas City, Missouri, Ilus W. Davis, Mayor, successor to H. Roe Bartle, Ong Aircraft Corporation, which is a developer of the subdivisions, Hugh Carr, Director of Water of Kansas City, Missouri, and Earl Brosnahan, a private contractor, building the subdivision for the Ong Aircraft Corporation.

The appellant brought this suit in the Circuit Court of Jackson County, Missouri, to enjoin the respondents from constructing and using water supply lines in a subdivision being developed in Jackson County, Missouri, known as "Crossgates" which was located within the territorial boundaries of said appellant. The appellant claims that it has the exclusive right to supply water to that portion of the new subdivision which is within the boundaries of the water supply district. The trial court made findings of fact and conclusions of law and entered judgment denying a permanent injunction against the respondents. The appellant appealed to the Supreme Court of Missouri, which court transferred the cause to this court on the ground that it did not have jurisdiction because the record did not affirmatively disclose that the amount in dispute exceeded $15,000.00.

Many motions were filed by both parties at various steps of this proceeding, but as none of them were dispositive of any issue involved in this appeal, they will not be discussed herein. The evidence offered by each party covered a wide range but only such evidence as we believe is relevant and material will be referred to herein. The appellant will be referred to as the District and respondent, Kansas City, Missouri, as the City.

The evidence discloses that by reason of the extension of the city limits of Kansas City, Missouri, large portions of the District's original service area have been detached and turned over to the City. After each detachment, the boundaries of the District were re-established to conform to the City's city limit boundary. The most recent detachment occurred pursuant to contract of July 7, 1961, between the District and the City, and the decree of the Circuit Court of Jackson County, Missouri, validated such action as provided by law.

The final annexation and detachment established a boundary line generally along 119th Street which is the southern boundary of the City and the northern limits of the City of Grandview. Respondent Ong Aircraft Corporation is the owner of an eighty acre tract of land that lies approximately one half on each side of the 119th Street dividing line. This tract, known as Crossgates, has been subdivided into 372 building lots of which 195 are north of the boundary line in the City and 177 are south of the line in the City of Grandview, Missouri, and within the District. The 195 lots in the City are not involved in this controversy. The 177 lots in the City of Grandview are.

On October 18, 1962, a contract was entered into between the Ong Corporation and the City by the terms of which the City agreed to supply water to the 177 lots located in Grandview through the mains to be provided by Ong Corporation. Work was begun under the contract and on December 6, 1962, the District filed its injunction suit against respondents claiming the exclusive right to supply water to the Grandview portion of the subdivision by virtue of the contract with the City dated July 7, 1961, and pursuant to the provisions of Chapter 247, under which the District was organized.

It is contended by the District that the Court erred in holding that the agreement of July 7, 1961, did not create areas of mutual exclusiveness for the serving of water. The agreement of July 7, 1961, was approved, under the provisions of Section 247.160, by the Circuit Court of Jackson County, Missouri, in Cause No. 83533. The District has failed to point out and this court has failed to find any express provision in said agreement which gives to the District any exclusive right to furnish water within the area of Crossgates subdivision lying within the City of Grandview. The decree of the Circuit Court dated

July 28, 1961, approving the agreement does not mention any such express agreement nor give any such exclusive right to the District. The petition of the District for injunctive relief is not based on any such express agreement. The court finds that there is no express agreement between the District and the City giving the District exclusive right to sell water in the District.

There being no express written contract giving the District exclusive right to furnish and sell water in the District, can such contract be implied? The court is of the opinion that it cannot. Section 432.070 provides as follows:

> "No county, city, town, school township, school district or other municipal corporation shall make any contract, unless the same shall be within the scope of its powers or be expressly authorized by law, nor unless such contract be made upon a consideration wholly to be performed or executed subsequent to the making of the contract; and such contract, including the consideration, shall be in writing and dated when made, and shall be subscribed by the parties thereto, or their agents authorized by law and duly appointed and authorized in writing."

Section 432.070, above, is construed in State ex rel. City of Mansfield, Missouri, et al. v. Honorable Joe C. Crain, Judge of the Circuit Court of Wright County, Missouri, Mo. App., 301 S.W. 2d 415, the court saying at l.c. 419:

> "The injunction petition also contains a general allegation that it relied upon the assurances and agreement * * * of the City of Mansfield that said City would not compete with Se-Ma-No during the term of the franchise and contracts. It is not alleged or contended in the brief that such assurance or agreement was in writing or by ordinance. Such a general

allegation fails to state any ground for injunctive relief. Section 432.070, R.S. Mo. 1949, V.A.M.S., requires that contracts made with a city must be in writing and duly executed as therein provided. It has been repeatedly held that the requirements of this section are mandatory, not directory, and that a contract not so made is void." (Citations omitted).

On the question of implied agreement, the same court, l.c. 418, has the following to say: "* * * The fundamental basis of the cause of action stated in the injunction petition is to the effect that the City of Mansfield, by the execution of the franchise now owned by Se-Ma-No, and by executing the street lighting and pumping station contracts, *impliedly* agreed not to compete with the company in the transmission and distribution of electrical energy within said city for the term and duration of said franchise and contracts. The injunction petition does not allege, nor do the attached exhibits show, any *express agreement* that the franchise is *exclusive*, or that the city *expressly agreed not to compete* with Se-Ma-No. Under such circumstances, there can be no *implied* limitation upon the right of the City of Mansfield to construct and operate a power plant. Cases specifically so holding are Memphis Electric Light, Heat and Power Company v. City of Memphis, 211 Mo. 488, 196 S.W. 1113; City of Joplin v. Southwest Missouri Light Company, 191 U.S. 150, 24 S.Ct. 43, 48 L.Ed. 217; Kansas City Power and Light Company v. Town of Carrollton, 346 Mo. 802, 142 S.W. 2d 849. These cases review many other authorities on the subject." The court holds that there is no express or implied contract herein which would give any exclusive right to the District to furnish water in the District.

Under this same point (Point I of its brief), the District for the first time injects into the case the doctrine of "prior jurisdiction". This assignment is not contained

in the District's motion for new trial and is therefore not preserved for appellate review. Civil Rule 79.03, V.A.M.R., Mutual Finance Company, Inc. v. Auto Supermarkets, Inc., Mo. App., 383 S.W. 2d 296; Wilson v. Murch, Mo. App., 354 S.W. 2d 332; Dial v. Seven-Up Bottling Company, Mo., 373 S.W. 2d 53.

Under Point II of its brief, the District contends that the trial court erred in not holding that the City's right to supply water beyond its corporate boundaries is conditioned upon compliance with terms of Section 386.250(7) and in failing to find that the City had failed to comply with that section. This assignment is not contained in the District's motion for new trial and is therefore not preserved for appellate review. Civil Rule 79.03, V.A.M.R., Mutual Finance Company, Inc., a Corporation, v. Auto Supermarkets, Inc., Mo. App., 383 S.W. 2d 296; Wilson v. Murch, Mo. App., 354 S.W. 2d 332; Dial v. Seven-Up Bottling Company, Mo., 373 S.W. 2d 53.

The District contends that Chapter 247 gives it exclusive right to supply water within its boundaries but does not point out what section gives it that exclusive privilege or prohibits the City from supplying water into the District. Section 91.050 provides as follows:

> "Any city in this state which owns and operates a system of waterworks may, and is hereby authorized and empowered, to supply water from its waterworks to other municipal corporations for their use and the use of their inhabitants, and also to persons and private corporations for use beyond the corporate limits of such city, and to enter into contracts therefor, for such time, upon such terms and under such rules and regulations as may be agreed upon by the contracting parties."

It is obvious that the above section authorizes the City to furnish water outside its corporate limits to persons and private corporations. The section does not prohibit the City from supplying water to persons or corporations in water districts. In fact, it does not limit or restrict where the City may supply water. If the legislature had intended to restrict the City as to where it could supply water, it could easily have done so by prohibiting it from entering water districts. Since Section 91.050, above, does not restrict the areas where the City can supply water and Chapter 247 neither restricts the City from the area of the District nor gives the District an exclusive right to supply water, we find no statutory support for the District's contention.

To support its position, much reliance by the District is placed on the use of the word "boundaries" in the statute. Of course, the District has to have boundaries. So do cities, counties and states. The boundary simply designates the area comprised in the unit, whether it be district, city, county or state. As said in 11 C.J.S., Boundaries, Sec. 1, p. 538, "A boundary is a line or object indicating the limit or furthest extent of a tract of land or territory; a separating or dividing line between countries, states, districts of territory, or tracts of land. The term is used to denote the physical object which divides, as well as the line of division itself." There is nothing magical in the use of the word "boundary". It simply denotes the limits of the area involved. It has nothing to do as to whether the district has exclusive rights within its "boundary" or not. In section 91.050, supra, the words "corporate limits of such city" are used. These words mean the same thing as boundary of the city. That section expressly authorizes the City to supply water beyond the "corporate limits" or boundaries. The District pro-

duces no authority to prevent the City from entering the District or giving it the exclusive right to supply water therein.

The District contends that the trial court erred in finding that there is no actual or threatened irreparable harm caused by the action of respondents. Mr. Mark A. Lucas testified for the District that over a fifteen-year period he was connected with every bond issue the District floated and that the District was not rated by any investment service, but that the District had better than medium credit—a good credit; that their obligations, both general and special, have a ready market and are very much in demand. When questioned if the acts in issue would be detrimental or beneficial to the bondholders, he stated, "It definitely would affect the bondholder," but he did not state how and to what extent. He stated that when two thirds of the district in which customers were actually being served was surrendered by de-annexation the District's credit only suffered "slight damage". Obviously, if the de-annexation of two thirds of the district where customers were being served only caused "slight damage" to the district, the loss of right to serve water to an area of only 41.59 acres not previously served and which remained within the district for taxing purposes, would not cause the district "irreparable damage".

A Mr. Bill T. Wall, investment banker, testified for respondents that general obligation bonds were payable from an unlimited ad valorem tax levied upon taxable property within the District and that special obligation bonds are payable solely from revenues of the water system after operation and maintenance expenses have been paid and that purchasers of these bonds look to the amount produced at the time the bonds are sold.

The evidence discloses that the tract involved here consists of 41.59 acres. Since this tract is not being annexed by the City and will remain in the District for tax purposes, no loss of revenue from general taxes will result. Having water furnished therein and the subdivision developed undoubtedly would enhance the value of the land therein and increase the amount of taxes collectible. The District in the past has never received any revenue and at present time is not receiving any revenue from this area because it has never had and does not now have any customers in the area. What revenue in the future would be available to the District in this area is purely conjectural and dependent upon too many contingencies to support a claim of irreparable damage. It cannot be said, therefore, with any degree of certainty, that the District has lost revenue by reason of the contract of October 18, 1962, between the City and Ong Aircraft Corporation. The boundaries of the District remain unchanged and the District's taxing power has not been curtailed. Considering all the evidence, there is no credible evidence of any present or future irreparable damage.

The court finds that the trial court's findings of fact are supported by the evidence and are correct; that its conclusions of law are proper; and that under the law and the evidence, the District is not entitled to a permanent injunction against the respondents.

The judgment of the trial court denying the District's petition for a permanent injunction against respondents should be and is affirmed.

CROSS, P. J. and HOWARD, J. concur. BLAIR, J. not participating.

Frank W. Hayes, Special Judge

APPENDIX B

Judge Jensen's Opinion

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI AT INDEPENDENCE

DIVISION 13

JACKSON COUNTY PUBLIC WATER SUPPLY DISTRICT No. 1,
Plaintiff,

vs.

ONG AIRCRAFT CORPORATION, a Corporation, CITY OF KANSAS CITY, MISSOURI, ILUS W. DAVIS, Successor to H. Roe Bartle, Mayor of Kansas City, Missouri, HUGH G. CARR, Director of Water, Kansas City, Missouri, and EARL BROSNAHAN,
Defendants.

No. 129,717

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

Now on this day, this cause having heretofore been tried by the Court on the 14th day of December, 1962, the 8th day of February, 1963, the 15th day of February, 1963, and the 1st day of March, 1963, and having been submitted to the Court for final determination, judgment and decree by a Stipulation and Agreement signed by all of the parties hereto, and filed herein on the 11th day of June, 1963, and the Court, having heard the evidence and considered said Stipulation and Agreement and the briefs and argument of counsel for the respective parties hereto,

and being fully advised in the premises, and upon its own motion under the provisions of Rule 79.01 (b) Rules of Civil Procedure, makes the following findings of fact:

1. That the plaintiff, Jackson County Public Water Supply District No. 1, is a Public Water Supply District organized and existing under the provisions of Chapter 247 and Sections 247.010 to 247.220, inclusive, R.S. Mo. 1959.

2. That the defendant, City of Kansas City, Missouri, is a duly organized and existing municipality under the laws of the State of Missouri.

3. That at all material times, the defendant Hugh G. Carr, was the duly elected, qualified and acting Director of the Water Department of Kansas City, Missouri.

4. That the defendant, Ong Aircraft Corporation, is a corporation, duly organized and existing under the laws of the State of Missouri, and is engaged in developing and improving for residential purposes a subdivision in Jackson County, Missouri, known as "Crossgates;" that the part of said subdivision described as

> The North 1/2 of the SW 1/4 of Section 12, Twp. 47, Range 33, except the West 1060 feet thereof, as measured at right angles from the West line of said 1/2, 1/4 section, Jackson County, Missouri

lies wholly within the city limits of the City of Grandview, Missouri, and within the geographical boundaries of the plaintiff Water District.

5. That defendant Ong Aircraft Corporation, at its own cost and expense, has constructed and laid throughout said entire Crossgates Subdivision a complete water system, including water pipes,

mains, valves, lines, conduits and hydrants, for the furnishing and affording water service to its present and prospective purchasers of residential properties.

6. That said Water System contains and provides for 372 separate water connections, 177 of which lie within the City of Grandview, Missouri and within the present geographical boundaries of the plaintiff, Jackson County Public Water Supply District No. 1.

7. That on or about July 7, 1961, the plaintiff and defendant City of Kansas City, Missouri, made and entered into a certain written agreement, duly authorized by the Board of Directors of plaintiff and by Ordinance of the City of Kansas City, Missouri, No. 26269, and under the provisions of Section 247.160 R.S. Mo. 1959, which agreement provided that certain areas, annexed or to be annexed by the City of Kansas City, Missouri, be de-annexed or excluded from the then area of the plaintiff Water District; that certain indebtedness of the plaintiff District with respect to said annexed areas be assumed by the City of Kansas City, Missouri; and that said City of Kansas City, Missouri, agreed to furnish water to the District for a period of time; that said agreement was, by the parties thereto, presented for approval to the Circuit Court of Jackson County, Missouri, in Division 12, thereof, and by decree of said Court, entered July 28, 1961, in Cause No. 83,533, was approved; said Court, by its decree, retaining jurisdiction of said cause, as by law provided.

8. That on October 18, 1962, the defendant, Ong Aircraft Corporation, and the defendant, City of Kansas City, Missouri, acting by and through the defendant, Hugh G. Carr, Water Director, made and entered into a certain contract whereby the City of Kansas City, Missouri, agreed to furnish water

to said defendant, Ong Aircraft Corporation's Crossgates water system, including said 372 water connections, of which 177 water connections lie within the city limits of the City of Grandview and within the then geographical boundaries of the plaintiff Water District.

9. That said contract dated October 18, 1962 did not reduce or limit plaintiff Water District's geographical boundaries, or restrict or limit its taxing power with respect thereto, granted by the provisions of Chapter 247 R.S. Mo. 1959.

10. That the plaintiff Water District has suffered no irreparable damage by reason of the matters and things complained of in plaintiff's petition, and there is no credible evidence of any future irreparable damage.

The grounds for the decision of the Court are:

1. That Chapter 247 and Sections 247.010 to 247.220, inclusive, R.S. Mo. 1959, do not grant to or vest in plaintiff, Jackson County Public Water Supply District No. 1, any exclusive right or privilege to furnish water or water service within the geographical limits or boundaries of the District.

2. That the agreement of July 7, 1961, by and between the plaintiff District and defendant City of Kansas City, Missouri, did not give or grant, or purport to give or grant to the plaintiff any exclusive right or privilege to furnish water or water service within the geographical limits or boundaries of the district then remaining; nor was it the mutual purpose or intent of the parties thereto to create in or grant or give to the plaintiff any such exclusive right or privilege.

3. That the defendant, Kansas City, Missouri, had the right to furnish and to contract to furnish water beyond the territorial limits of Kansas City, Missouri, by reason of Section 91.050 R.S. Mo. 1959,

and Section 44 of Article 3, Charter of Kansas City, Missouri.

4. That defendant, Kansas City, Missouri, a municipal corporation, can not by contract, express or implied, grant exclusively to plaintiff the rights given to and vested in said city by Section 91.050, R.S. Mo. 1959 and Section 44 of Article 3, Charter of Kansas City, Missouri or part with, alienate or surrender such rights.

5. The defendant, City of Kansas City, Missouri had a legal right to contract with defendant, Ong Aircraft Corporation, to furnish water to the Crossgates Subdivision and to all parts thereof.

6. No Constitutional or statutory rights of the plaintiff have been violated or impaired by any contracts, agreements or the conduct of the defendants or any of them.

7. Upon the pleadings and the evidence the plaintiff has wholly failed to prove its right to equitable relief or to a permanent injunction.

THEREFORE, the judgment of the Court is as follows:

Now on this day, this cause having been heretofore tried by the Court on the 14th day of December, 1962, the 8th day of February, 1963, the 15th day of February, 1963, and the 1st day of March, 1963, and having been submitted to the Court for final determination, judgment and decree by a stipulation and agreement signed by all the parties hereto, and filed herein on the 11th day of June, 1963, and the Court having heard the evidence and considered said stipulation and agreement and the briefs and argument of counsel for the respective parties hereto, and being fully advised in the premises finds the issues, all and singular, against the plaintiff, Jackson County Public Water Supply District No. 1, and in favor of defendants, Ong Aircraft Corporation, a corporation, City of Kansas City,

Missouri, Ilus W. Davis, Successor to H. Roe Bartle, Mayor of Kansas City, Missouri, Hugh G. Carr, Director of Water of Kansas City, Missouri, and Earl Brosnahan and each of them, and further finds that the plaintiff's petition for a permanent injunction should be denied and that plaintiff take nothing by this suit.

WHEREFORE, it is Ordered, Decreed and Adjudged that plaintiff's petition for a permanent injunction against the defendants and each of them be and the same is hereby denied; that plaintiff take nothing by this suit and that defendants have and recover of and from the plaintiff their costs in this behalf expended and have execution therefor.

Let judgment be entered accordingly.

/s/ Richard D. Jensen
Judge

Dated this 14th day of August, 1963.

APPENDIX C

Order Denying Motion for Rehearing

IN THE KANSAS CITY COURT OF APPEALS
DECEMBER SESSION, 1966
MONDAY, DECEMBER 5, 1966

Jackson County Public Water Supply District No. 1,
Appellant,
vs.
Ong Aircraft Corp., et al.,
Respondents.
No. 24337

Now at this day the Court having considered and fully understood appellant's motion for rehearing or in the alternative to transfer to the Supreme Court herein, doth consider and adjudge that said motion for rehearing be and the same is hereby overruled and transfer to the Supreme Court is denied.

* * * * * *

STATE OF MISSOURI, Sct.

I, Mary Louise Thomas, Clerk of the Kansas City Court of Appeals, do hereby certify the above and foregoing to be a full, true and complete copy of the Opinion of the Court filed on October 3rd, 1966, of Appellant's motion for rehearing or in the alternative to transfer to the Supreme Court filed October 18th, 1966 and the Courts' Order ruling on said motion on December 5th, 1966, as fully as the same appear of record and on file in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at my office in Kansas City, Missouri, this 28th day of December, 1966.

/s/ Mary Louise Thomas
Clerk

APPENDIX D

IN THE SUPREME COURT OF THE STATE OF MISSOURI

JACKSON COUNTY PUBLIC WATER SUPPLY DISTRICT No. 1,
Appellant,

vs.

ONG AIRCRAFT CORPORATION, CITY OF KANSAS CITY, MISSOURI, ILUS W. DAVIS, Successor to H. Roe Bartle, Mayor of Kansas City, Missouri, HUGH G. CARR, Director of Water, Kansas City, Missouri, and EARL BROSNAHAN,
Respondents.

Division No. .....
Case No. .....

Application to the Supreme Court for Order to Court of Appeals to Transfer

TO THE HONORABLE JUDGES OF THE SUPREME COURT OF MISSOURI:

1. Your petitioner respectfully submits this application for a transfer to review and quash the judgment of the Kansas City Court of Appeals, constituted of the Honorable Gerald Cross, Presiding Judge, Honorable Fred L. Howard, Associate Judge, and Honorable Sam C. Blair, Associate Judge, in a certain cause styled Jackson County Public Water Supply District No. 1, plaintiff-appellant, v. Ong Aircraft Corporation, a corporation, City of Kansas City, Missouri, Ilus W. Davis, Successor to H. Roe Bartle, Mayor of Kansas City, Missouri, Hugh G. Carr, Director of Water, Kansas City, Missouri, and Earl Brosnahan, defendants-respondents, No. 24,337, wherein said Court of Appeals affirmed a judgment for the defendants-respondents herein, in an opinion by Special Judge Frank W.

Hayes. Timely motions by the petitioner for a re-hearing and for an order of transfer were overruled by the Kansas City Court of Appeals on the 5th day of December, 1966.

2. Attached hereto are the Opinion of the Court of Appeals, "Exhibit 1"; your petitioner's Motion for Rehearing and for Transfer, "Exhibit 2"; an Order of the Court of Appeals overruling said Motions for Rehearing and for Transfer, "Exhibit 3"; and the Certificate of the Clerk of said Court of Appeals authenticating the said exhibits. Presented herewith are also the suggestions in support of this Application, petitioner's Notice of Application, and Proof of Timely Service of Notice and of Application and of the Exhibits and Suggestions.

3. The cause in question was an action instituted in the Circuit Court of Jackson County, by the appellant, Jackson County Public Water Supply District No. 1, hereinafter referred to as petitioner, against the above-named respondents, to enjoin said respondents from constructing and using water supply lines in a sub-division being developed in Jackson County, Missouri, known as "Crossgates", which was located in the territorial boundaries of your petitioner. It is the contention of your petitioner that as between your petitioner and the City of Kansas City, Missouri, your petitioner has the exclusive right to supply water to that portion of the new sub-division which is within the boundaries of the water supply district, and also, that respondent, Kansas City, Missouri, is statutorily prohibited from owning, operating and maintaining a water supply system outside of the territorial limits of the City. The Trial Court made findings of fact and conclusions of law and entered judgment denying a permanent injunction against the respondents. The appellant appealed to the Supreme Court of Missouri, which court transferred the cause to the Kansas City Court of Appeals on the

ground that the Supreme Court did not have jurisdiction and because the record did not affirmatively disclose that the amount in dispute exceeded fifteen thousand dollars ($15,000.00).

4. The opinion of the court denying a permanent injunction against the respondents misinterpreted the law and is contrary to the law and directly in conflict with the decision of the Supreme Court of the State of Missouri in the case of *Taylor* v. *Dimmitt,* 78 S.W. 2d 841 (Sup. Ct. 1934). In the court's opinion (p. 7), the court states that V.A.M.S. Sec. 91.050 authorizes a city to own, construct and maintain public utility facilities outside of the territorial limits of the city which said facilities are to be used to supply public utility services to inhabitants lying without the territorial limits of said city. The *Taylor* case held that a city is without statutory authority to construct, service, and maintain facilities for the sale of its surplus public utilities outside the corporate limits of the city. The court in the *Taylor* decision stated that a city is merely authorized to sell its surplus public utilities to municipal corporations, persons, or private corporations outside the corporate limits of the city, but the statutory authorization for such sale does not carry with it the authorization to construct and maintain facilities outside the corporate limits of the city for the sale of such public utilities.

5. The opinion of the court denying a permanent injunction to your petitioner misinterpreted the law and is contrary to the law as set forth in V.A.M.S. Sec. 91.050 and is in conflict with the decision of the Supreme Court of the State of Missouri in the case of *State ex rel. Halferty* v. *Kansas City Power and Light Company,* 145 S.W. 2d 116 (Sup.Ct. 1941).

V.A.M.S., Sec. 91.050 provides as follows:

> "Any city in this state which owns and operates a system of waterworks may, and is hereby authorized and empowered, to supply water from its waterworks to other municipal corporations for their use and the use of their inhabitants, and also to persons and private corporations for use beyond the corporate limits of such city, and to enter into contracts therefor, for such time, upon such terms and under such rules and regulations as may be agreed upon by the contracting parties."

In the *Halferty* case, supra, a water district was deemed to be a municipal corporation in the broad sense of the term. Reading the aforementioned statute in conjunction with the holding in the *Halferty* case, the only logical conclusion which may be drawn is that a city may not enter into a contract for the supply of water with persons or private corporations lying within the corporate limits of another municipal corporation (such as Jackson County Water Supply District No. 1), but moreover, a contract for supply of water to such persons or private corporations lying within the corporate limits of such other municipal corporation must be entered into by and between the supplying city and the governing body of such other municipal corporation and not by and between the supplying city and such persons or private corporations individually.

6. The opinion of the court denying a permanent injunction to the appellant misinterpreted the law and is contrary to the law as set forth in Chapter 247 of V.A.M.S. The plain meaning of the various provisions of Chapter 247 are that the legislature intended that water districts such as your petitioner should be exclusive except for such exceptions contained in Chapter 247. None of the exceptions contained in that chapter allow a city to encroach

upon the boundaries of a water district without first contracting with the district as a municipal corporation or through a process of de-annexation of a portion of that district which may lie within the corporate limits of the de-annexing city. Neither of these elements are present in the case at bar.

7. The court's opinion in this case is in direct conflict with an opinion rendered by the St. Louis Court of Appeals in the case of *Wellston Fire Protection District of St. Louis County* v. *State Bank and Trust Company of Wellston,* 282 S.W.2d 171 (St. L. C.A. 1955). Therefore, a question of great importance is presented to this court on this appeal and it is incumbent upon this court to hear the case and clarify the law in this state in order to set guidelines for the future.

The court in arriving at its decision in the case at bar did not consider the above case on its merits in making this decision for the stated reason that the appellant had failed to raise the "prior jurisdiction" doctrine in its Motion for New Trial. In support of its holding in this regard, the court cited Rule 79.03 plus three Missouri cases. All that the cited cases and rule hold is that in order for a contention to be raised in an appellate court by an appellant, the appellant must first have raised the question in its Motion for New Trial in the trial court. This requirement was amply fulfilled by paragraphs 9(c) (e) (g) of Appellant's Motion for New Trial in which the appellant contended that exclusive jurisdiction of the district resides in the Water District rather than in the City and that the City's encroachment was illegal. Rule 79.03 requires only that the proposition be raised in the Motion for New Trial, not that the reasons in support of the proposition should be advanced. The "prior jurisdiction" doctrine is a reason

in support of the contention of exclusive jurisdiction upon behalf of the Water District, and as such it was not necessary for the appellant to specifically set forth this legal doctrine in its Motion for New Trial.

If the decision of the Kansas City Court of Appeals in the instant case is allowed to stand, it will mean that municipal corporations may enter into competition with each other for the supply of public utilities. This holding is in direct contravention with the time-honored principle that public utility service may be more effectively and economically supplied on a monopolistic basis rather than a competitive basis.

The court in its opinion (pp. 8-9) dealt extensively with the question of whether or not the appellant was damaged by any loss of its taxing power. In so doing the court wholly failed to take cognizance of the fact that appellant was deprived of revenue by the City, and that such revenue is the only source from which appellant may repay its revenue bond obligations. The fact that the area in question is now producing revenue was shown by a picture allowed into evidence in the Kansas City Court of Appeals showing homes built in the southern portion of Crossgates, which homes are being served by the City and from which the City is receiving revenue income.

WHEREFORE, based on the foregoing application and the suggestions in support thereof, petitioner prays this court to issue its order of transfer directing the judges of the Kansas City Court of Appeals to certify to this court the record in said mentioned cause, and upon consideration thereof, to quash said judgment of the said Court of Ap-

peals and give such other and further relief as in the premises may appear to be proper.

Respectfully submitted,

Linde, Thomson, Van Dyke, Fairchild & Langworthy
By /s/ Charles N. Hess & Jerry R. Linscott
Attorneys for Appellant, Jackson County Water District No. 1,
Floor 3, Union National Bank Building
Kansas City, Missouri HArrison 1-6388
Hendren & Andrae
By /s/ Henry Andrae
Attorneys for Appellant
Seventh Floor, Central Trust Building
Jefferson City, Missouri

Letter of January 5 to Chief Justice Storckman

LINDE, THOMSON, VAN DYKE, FAIRCHILD & LANGWORTHY

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Lowell R. Johnson
Wallace Sutherland
Of Counsel

January 5, 1967

Hon. Clem F. Storckman
Presiding Judge
Supreme Court of Missouri
Jefferson City, Missouri

Re: Application for Order to Kansas City Court of Appeals to Transfer Jackson County Public Water District No. 1 vs. Ong Aircraft, et al. No. 52709

My dear Judge:

On January 4 we filed in the Supreme Court an Application to Transfer regarding the above case. Counter Suggestions were served on us on the same day.

In re-reading our Suggestions we note that on Page 3, approximately 12 lines from the bottom we commenced a paragraph with a date of "October 18, 1966". Obviously, that should have been October 18, 1962.

We are aware that there is no provision for Reply Suggestions, but when in attempting to distinguish an "undis-

tinguishable" authority the respondents cite Exhibits and Findings that are not before the Court and misquote those Exhibits and Findings, we feel compelled to at least furnish the Court with the Exhibits and Findings being referred to. We are, therefore, attaching to this letter for your examination Exhibit 14 (a contract of October 18, 1962) and Finding of Fact Number 5, Transcript 359, both referred to in the first sentence of Paragraph 2, Page 2, the respondent's opposition Suggestions.

It will be noted that Finding of Fact Number 5 does not find that the construction was "at no cost whatever to the City of Kansas City, Missouri". Exhibit 14 expressly provides (third paragraph from bottom Page 1) that "all water mains * * * shall be the property of the City, and control, operation and right of use thereof shall be vested wholly and exclusively in the City" and on Page 2, paragraphs (a) through (d), that the City will refund to the Ong Aircraft Corporation practically all of the cost of construction initially advanced by it. As the Court can see from this evidence, the provisions of this contract place the water main extension and facilities involved in this case clearly within the prohibitions of the *Taylor* vs. *Dimmitt* decision, 78 S.W. 2d 841 (Sup. Ct. 1934).

Very truly yours,

Linde, Thomson, Van Dyke, Fairchild & Langworthy
By

CWH:jh
Enc.
cc: Edward F. Aylward
Neil F. Cline and John L. Gaylord
Herbert C. Hoffman, attention Ned Bahr
b.c. Henry Andrae—sent 1-10-66

Contract for Water Main Extension

FIRST PARTY: The City of Kansas City, Missouri, acting through its Director of the Water Department, hereinafter called the City.

SECOND PARTY: ONG AIRCRAFT CORP. (a Missouri Corp.), P. O. Box 214, Kansas City, 41, Mo., hereinafter called the Applicant.

ESTIMATED COST: Fifty-Three Thousand Three Hundred Eighty-Seven . Dollars ($53,387.00)

TOTAL DEPOSIT REQUIRED (10% of the Estimated Cost) Five Thousand Three Hundred Thirty-Nine Dollars ($ 5,339.00)

CREDIT: (Application Fee) NONE Dollars ($.....)

BALANCE OF DEPOSIT: (To be Submitted with Contract) Five Thousand Three Hundred Thirty-Nine Dollars ($ 5,339.00)

CITY'S SHARE: (Oversize Main Only) N/A Dollars ($.....)

LOCATION OF PROPOSED WATER MAIN: 8" main in Armitage Drive, Blue Ridge to 120 Terr.; 6" & 8" in Belmont, Blue Ridge to 120 Terr.; 8" main in 120 Terr.; 8" main in Beacon, Blue Ridge to Armitage; & 6" main in Beacon 119 Terr. to 120 Terr.—All in Crossgates Subdivision. ESTIMATE No. 4901

THIS CONTRACT, made and entered into this 18th day of October, 1962.

WHEREAS, the Applicant has applied for a water main extension to be constructed in the location named above, and

WHEREAS, City has made a preliminary study and drawing of the proposed water main extension and has estimated the cost of said extension as shown above, and

WHEREAS, the Director of the Water Department in his discretion has determined that it is in the best interests to allow the Applicant to perform the construction and installation of said extension.

NOW, THEREFORE, it is agreed between the parties named above that the Applicant will construct and install the water main extension and appurtenances in accordance with the plans, specifications, and drawings which are set forth in the attached Estimate and by reference made a part hereof. This installation shall only be started after the streets and roads, in which the main is to be installed, have been graded to an extent to be determined by the Chief Engineer and Superintendent of the Water Department. All work in constructing and installing such extension shall be open to inspection by the Water Department of the City during all phases of such work. Upon the completion of said construction and installation of the water main extension and appurtenances thereto, all in accordance with the Water Department standards and specifications, the final approval by the Chief Engineer and Superintendent of the Water Department, and the furnishing of the complete cost of said construction and installation to the Chief Engineer and Superintendent, including paid bills for all labor and materials used on construction and installation, the City will accept said water main in accordance with the terms of this contract.

Applicant agrees that all water mains installed in accordance with this contract shall be the property of the City, and the control, operation, and right of use thereof shall be vested wholly and exclusively in the City; that said water mains shall be guaranteed against defective materials and workmanship for a period of one (1) year after furnishing of the complete cost of said construction and installation to the Chief Engineer and Superintendent, and

the Applicant shall have no interest therein other than the right to the refund money in the manner provided herein.

Applicant hereby pays the "Balance of Deposit" to the City, as the balance due on the total deposit, and City hereby accepts the total deposit as a nonrefundable charge for engineering, design, supervision of construction (and testing), flushing, chlorination, and other overhead costs of the City.

It is further agreed that the City shall pay the cost of connecting the water main extension to the existing water mains of the City; and that in totalling the actual cost of the construction and installation, the Applicant shall not include any charge made by the City for engineering, design, supervision of construction (and testing), flushing, chlorination, and other overhead cost of the City.

It is further agreed that the Applicant will not sell or in any way furnish or supply water outside of the limits of Crossgates Subdivision.

It is further agreed that if the plans and specifications as shown on the attached estimate include any mains larger in size than eight (8) inches, the City will pay its "share" as shown on page 1 to Applicant within ninety (90) days after acceptance of the water main extension by the City; and Applicant agrees that this shall be the City's entire share of the cost of the main extension, regardless of actual cost.

It is further understood that the "Estimated Cost" set out on page 1 is the estimated cost of a water main extension using only mains eight-inch or less in size.

It is further agreed that in totalling the actual cost of the construction and installation for refund purposes, Applicant shall deduct therefrom the "share" paid by the City.

It is further agreed that the Applicant shall be entitled to refunds on account of original customers directly and permanently connected to the main extension and on account of revenue collected from such customers, as follows:

(a) For each customer who is the occupant of a single-family dwelling or a single family portion of a multiple dwelling, the sum of Two Hundred Fifty Dollars ($250.00) per customer.

(b) For each customer qualifying for a commercial classification in the City's water rate plan, a sum equal to twenty-five (25) per cent of the revenue collected by the Water Department on account of bills for water service for meter reading dates that fall within the term of contract.

(c) Refunds shall be due and payable semi-annually from the anniversary date of this contract; no refunds can be earned or allowed after ten (10) years from the original date of this contract. The City has the option to refuse to make or allow service connections, or to pay refunds while there is a claim against the Applicant for unpaid bills for material, labor, and services arising out of construction and installation of this water main.

(d) In no event shall the accumulated refunds exceed the lesser of the following amounts:

1. Estimated cost as set out on page 1 hereof, or

2. Actual cost as furnished by the Applicant.

The liability to make refunds is contingent solely on the ability of the City to do so from appropriations for this purpose from the Water Fund. The obligation to pay refunds will be subordinate to the payment of operating expense, debt service and expenditures for other necessary capital improvements. The payment of refunds will be

made in full in the order of the date earned. There will be no interest or other charges assessed against the City for the delinquent payment of refunds.

It is further agreed that Applicant will have the said construction and installation started within six (6) months from date of this contract or City, at its option, may refund the "Balance of Deposit," as submitted with contract, to Applicant and cancel this contract.

It is understood that in the construction and installation of the water main extension and appurtenances, the Applicant is an independent contractor and is in no way acting as agent, servant, or employee of the City.

The Applicant will indemnify the City and hold the City harmless from any and all claims of any and all persons, firms, and corporations who may hereafter assert any claim of any type arising out of the construction and installation of the said water main extension and appurtenances.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

Ong Aircraft Corporation
(A Missouri Corporation)
/s/ Donald H. Ong
Title President
City of Kansas City, Missouri
By /s/ Hugh G. Carr
Director of the Water Department

(Seal)

Attest
/s/ Grace M. Harris
Secy-Treas

Approved as to form and legality
/s/ Charles A. Darby
Assistant City Counselor

Finding of Fact Number 5 Circuit Court Opinion Dated November 19, 1963

5. That defendant Ong Aircraft Corporation, at its own cost and expense, has constructed and laid throughout said entire Crossgates Subdivision a complete water system, including water pipes, mains, valves, lines, conduits and hydrants, for the furnishing and affording water services to its present and prospective purchasers of residential properties.

Telegram Denying Motion to Transfer

WESTERN UNION TELEGRAM

The filing time shown in the date line on domestic telegrams is LOCAL TIME at point of origin. Time of receipt is LOCAL TIME at point of destination.

800P C ST JAN 9 67 KA465

SSD300 K JCA174 COPLECT JEFFERSON CITY MO 9 444P CST

MESSRS LINDE THOMSON VANDYKE FAIRCHILD AND LANGWORTHY

300 UNION NATL BANK BLDG KSC

JACKSON COUNTY WATER SUPPLY DISTRICT NO. 1 VS. ONG AIRCRAFT ET AL. APPLICATION TO TRANSFER DENIED

MARION SPICER CLERK
(04).

APPENDIX E

IN THE SUPREME COURT OF THE STATE OF MISSOURI

JACKSON COUNTY PUBLIC WATER SUPPLY DISTRICT No. 1,
Appellant,
vs.
ONG AIRCRAFT CORPORATION, et al.,
Respondents.

Division No. .....
Case No. .....

Motion for Rehearing and Reconsideration

Comes now the plaintiff and applicant in the above matter and moves that the Supreme Court rehear and reconsider its Order of Denial of its Application to Transfer this cause from the Kansas City Court of Appeals, entered January 9, and for grounds of said Motion states:

1. The plaintiff, which shall hereinafter sometimes be referred to as the "District", wishes to call to the attention of the Court the following matters of law and fact which we feel the Court overlooked and misinterpreted in said denial order. On January 6, 1967, the District submitted to the Court a letter, with which there was attached an Exhibit, being a contract dated October 18, 1962, between Kansas City, Missouri, and the Ong Aircraft Corporation. January 6 was a Friday, and the Court's Order of Denial was made on Monday. Whether or not the Court fully appreciated the significance of this Exhibit we cannot tell; but since it had been referred to and incorrectly quoted by the respondents, we felt that it was absolutely im-

perative that the Court have this Exhibit before it in considering our Application for Transfer.

2. This additional Exhibit was furnished so that there could be no question that it completely corroborates the District's position that the Opinion of the Kansas City Court of Appeals was in direct conflict with the prevailing Opinion of the Supreme Court in *Taylor* v. *Dimmitt*, 78 S.W.2d 841. As pointed out in the Application to Transfer, the Kansas City Court of Appeals o/a V.A.M.S., Sec. 91.050, permitted Kansas City, Missouri to go beyond its borders and construct, own, maintain and operate a water main extension inside another municipality. Exhibit 14, the contract between Kansas City, Missouri, and Ong Aircraft Corporation, expressly provides that Kansas City, Missouri, shall own, maintain, operate and ultimately pay for the water main extension in question. This is precisely what the *Taylor* v. *Dimmitt* opinion says cannot be done. In the construction of V.A.M.S., Sec. 91.020, an identical statute to the one in question, side by side in the statute book and differing only because one refers to electrical power extensions and the other refers to waterworks, the *Taylor* v. *Dimmitt* case held "The apparent logical conclusion to be drawn from the legislation (referring to Section 91.020 as then differently numbered) is that the legislature knowingly and purposely withheld from the city owning the plant the authority to construct, maintain and operate an electrical transmission line outside its corporate limits * * *." There can be no greater or more direct conflict than is here shown between the *Taylor* v. *Dimmitt* case and the Kansas City Court of Appeals opinion.

3. Because this conflict was so positive, we de-emphasized the some seventeen errors made in the Kansas City Court of Appeals opinion and which, if this application is denied, will still stand as law.

4. Because of the positiveness of the conflict, we did not point out to the Court that this is a matter of great interest to a great many inhabitants of water districts operating on the perimeter of large cities such as Kansas City, Missouri. The result of this case can be chaotic to the operation of these districts because it permits a large municipality to willy-nilly expand its services into these districts and in direct competition thereto. It is for this reason that we have maintained throughout this litigation that this is not only an illegal expansion which was sought to be enjoined, but it is a highly impractical and unreasonable conclusion.

WHEREFORE, we urge the Court to take another look at this Kansas City Court of Appeals opinion in the light of the Supreme Court's opinion in *Taylor* v. *Dimmitt* so that the *Taylor* v. *Dimmitt* case can be expressly overruled and set aside if it is not still the law. The inhabitants of these water districts as well as the Directors, who are able businessmen who give their time to this public office for nothing, are entitled to know from this Court the extent of their duties and obligations and the extent to which encroachment can prevail. This Court's *Taylor* v. *Dimmitt* case says there cannot be such encroachment, and the Kansas City Court of Appeals has now said that there can be. We feel that the *Taylor* v. *Dimmitt* case is right and should be followed.

Linde, Thomson, Van Dyke, Fairchild & Langworthy
By /s/ Charles W. Hess
Attorneys for Appellant
Floor Three, Union National Bank Building
Kansas City, Missouri HA 1-6388
Hendren and Andrae
By /s/ Henry Andrae
Attorneys for Appellant
7th Floor, Commerce Central Trust Building
Jefferson City, Missouri

Copy of the foregoing Motion was mailed to Mr. John Gaylord, 1066 Home Savings Bldg., Kansas City, Mo.; Messrs. Herbert C. Hoffman and Ned Bahr, City Hall, Kansas City, Mo.; and Mr. Ed Aylward, 900 Commerce Bldg., Kansas City, Mo., Attorneys for Respondents, on this ..... day of January, 1967.

APPENDIX F

Order Denying Motion

And thereafter, on the 20th day of January, 1967, the following proceedings were had and entered of record in said cause, to-wit:

Jackson County Water Supply District No. 1, Appellant, vs. Ong Aircraft Corporation, a corporation, et al., Respondents.	52 709

Now at this day, on consideration of the motion of appellant for leave to file motion for rehearing and reconsideration and the motion to recall mandate in the above-entitled cause, it is ordered by the Court that both of the said motions be, and the same are, hereby denied.

The Motion for Rehearing and Reconsideration which was tendered but *the filing thereof* in the Supreme Court of Missouri *denied* is in words and figures following, to-wit:

IN THE SUPREME COURT OF THE STATE OF MISSOURI

JACKSON COUNTY PUBLIC WATER SUPPLY DISTRICT No. 1,
Appellant and Movant,
vs.
ONG AIRCRAFT CORPORATION, et al.,
Respondents.

Division No. .....
Case No. 52709

Motion for Leave to File Motion for Rehearing and Reconsideration and Motion to Recall Mandate

Comes now the appellant and movant in the above matter and respectfully moves that the Supreme Court grant it leave to file its Motion for Rehearing and Reconsideration of its Order of Denial of its application to transfer this cause from the Kansas City Court of Appeals entered January 9, 1967, and further moves that the Court recall its mandate issued to the Kansas City Court of Appeals on January 11, 1967, and for grounds in support of said motion states:

1. The movant believes that the Court may have had insufficient time to fully consider an exhibit submitted to the Court on January 6, a Friday, and in view of the Court's Order of Denial made on a Monday, January 9; said exhibit had been referred to and incorrectly quoted by the respondents in their Suggestions in Opposition to the Application to Transfer.

2. This additional exhibit corroborates movant's position that the Opinion of the Kansas City Court of Appeals was in direct conflict with the prevailing Opinion of the Supreme Court in *Taylor* v. *Dimmitt*, 78 S.W.2d 841, interpreting Section 91.050, V.A.M.S. Reference is made to the

said "Motion for Rehearing and Reconsideration" for further evidence in support of this motion.

3. The Court's mandate in this case was sent to the Kansas City Court of Appeals on January 11, and should be recalled if this motion for leave to file the mentioned motion is granted.

Linde, Thomson, Van Dyke, Fairchild & Langworthy
By /s/ Charles W. Hess
Attorneys for Appellant
Floor Three, Union National Bank Building
Kansas City, Missouri HA 1-6388
Hendren and Andrae
By /s/ Henry Andrae
Attorneys for Appellant
7th Floor, Central Trust Building
Jefferson City, Missouri 636-8135

PROOF OF SERVICE

The undersigned certifies that a complete copy of this instrument was served upon the attorneys of record of each party to the above action by enclosing the same in envelopes addressed to said attorneys at their business address as disclosed in the pleadings of record herein, with first-class postage fully prepaid, and by depositing said envelopes in a U. S. post office mailbox in Jefferson City, Missouri, on the 19th day of January, A.D. 1967.

/s/ Henry Andrae

APPENDIX G

Recitation of Sections 91.020 and 91.050, V.A.M.S.

MISSOURI STATUTES, the latter one cited by the Kansas City Court of Appeals Opinion and the former one construed by the Supreme Court in *Taylor* v. *Dimmitt*.

"91.020. Cities empowered to sell light and power

Any city in this state, which owns and operates any electric light or power plant, may, and is hereby authorized and empowered to supply electric current from its light or power plant to other municipal corporations for their use and the use of their inhabitants, and also to persons and private corporations for use beyond the corporate limits of such city, and to enter into contracts therefor for such time and upon such terms and under such rules and regulations as may be agreed upon by the contracting parties. (R.S. 1939, §7787)"

"91.050. Cities owning waterworks may supply other cities, etc.

Any city in this state which owns and operates a system of waterworks may, and is hereby authorized and empowered, to supply water from its waterworks to other municipal corporations for their use and the use of their inhabitants, and also to persons and private corporations for use beyond the corporate limits of such city, and to enter into contracts therefor, for such time, upon such terms and under such rules and regulations as may be agreed upon by the contracting parties. (R.S. 1939, §7790)"

APPENDIX H

(R. Ex. 13)

Public Water Supply District No. 1 of Jackson County, Missouri

Balance Sheet
October 31, 1962

ASSETS

Current Assets			
Cash on Hand	$ 150.00		
Grandview Bank (Water Revenue Fund)	62,302.12		
Grandview Bank (Construction Fund)	1.58		
Grandview Bank (Special Obligation Bond Retirement Reserve Fund))	648.75		
Grandview Bank (Construction Fund)	5,055.25		
Hickman Mills Bank (Developers Fund)	1,841.49		
Hickman Mills Bank (Customer Deposits)	19,178.83	$ 89,178.02	
Consumers Accounts Receivable		10,413.57	
Federal Depository Receipts		542.81	
Prepaid Insurance		5,316.05	
Total Current Assets			$ 105,450.45
Other Assets			
Deposit—Missouri State Highway			50.00
Investments			
United States Government Bonds		$ 36,000.00	
Certificate of Deposit		15,000.00	51,000.00

Mixed Assets		
Land	$ 12,832.10	
Buildings	18,059.72	
Distribution System	1,380,233.50	
Towers & Reservoir	215,223.00	
Pump Houses	43,783.66	
Pumps & Motors	30,740.79	
Meters	370,201.00	
Compressors	6,674.93	
Furniture & Fixtures	15,432.97	
Equipment	23,932.91	
Operating Tools	2,857.38	
Automobiles & Trucks	10,121.55	
	$2,130,093.51	
Less—Reserve for Depreciation	279,072.02	1,851,021.49
Inventory		
Pipe Line Materials	$ 15,698.94	
Service Connection Materials	3,173.00	
Repair Parts	8,309.10	27,181.04
Sinking Fund Assets		
Cash in Bank available for the payment of Principal & Interest on General Obligation Bonds	$ 9,651.90	
Certificates of Deposit	40,000.00	
U. S. Treasury Bill	9,657.91	59,309.81
TOTAL ASSETS		$2,094,012.79

Subject to comments in accompanying report.

Public Water Supply District No. 1 of Jackson County, Missouri

Balance Sheet
October 31, 1962

LIABILITIES

Current Liabilities			
Accounts Payable		$ 14,596.82	
F.I.C.A. Tax		208.24	
Federal Withholding Tax		542.81	
Missouri Sales Tax		343.05	
Missouri Withholding Tax		25.71	
Accrued Interest		923.95	
Total Current Assets			$ 16,640.58
Water Service Deposits—Customers			30,178.83
Developers Rebates			124,019.84
Developers Advance Capital			1,841.49
Bonded Debt			
Special Obligation Bonds, Principal & Interest, payable out of net income from operation of the district		$113,366.00	
General Obligation Bonds, Principal & Interest payable out of Sinking Fund created by direct tax levy on property within the district		235,337.77	348,703.77
Reserve for Retirement & Interest General Obligation Bonds			
Balance October 31, 1961	$ 53,994.12		
Tax Collection during the year	23,602.22		
Interest on Certificates of Deposit	591.53	78,187.87	

Less—Principal & Interest Payments	$ 18,001.80		
Payment to General Fund	876.26	18,878.06	
Balance October 31, 1962			59,309.81
Surplus			
Contributed by Public Works Administration		$136,462.42	
Donated Surplus		216,487.83	
Tax Collections applied in payment of General Obligation Bonds		324,342.59	
General Obligation Bonds Premium		3,310.50	
Equity Transfer to Kansas City, Missouri		(961,402.67)	
Operating Profit:			
Balance October 31, 1961	$1,773,164.92		
Net Profit—Fiscal Year Ended October 31, 1962	20,952.88		1,513,318.47
TOTAL LIABILITIES			$2,094,012.79

Subject to comments in accompanying report.

APPENDIX I

Water Districts in Missouri Having Revenue Bond Issues Guaranteed by Farmers Home Administration, March, 1967

No. of Districts	County	District Numbers	Amount of Bond Issue	Additional Applications Pending
2	Jackson	13	$ 545,000	
		14	144,000	
4	Platte	2	417,000	X
		3	199,000	
		4	330,000	Loan & Grant, $67,000
		5	338,000	
4	Clay	3	345,000	
		4	265,000	
		5	210,000	
		6	270,000	
6	Boone	1	110,000	
		2	250,000	
		4	579,000	
		6	500,000	
		7	275,000	
		9	694,000	
6	Jefferson	2)		
		3)		
		5)	6,000,000	
		6)		
		7)		
		8)		
1	Green	1	131,000	
2	Butler	1	635,000	
		2	575,000	
		TOTAL	$12,812,000	

APPENDIX J

Public Water Supply District No. 1 of Jackson County, Missouri

BALANCE SHEET — OCTOBER 31, 1966

ASSETS

Current Assets			
Cash on Hand	$ 150.00		
Grandview Bank (Bond Retirement Fund)	767.66		
Grandview Bank (Water Revenue Fund)	33,058.61		
Grandview Bank (Customers' Deposits)	18,128.25		
Grandview Bank (Construction Escrow)	1,460.02		
Grandview Bank (Developers Fund)	2,088.90		
Suburban Bank	622.83		
Hickman Mills Bank	14,831.63	$ 71,107.90	
Customers' Accounts Receivable		10,435.07	
Prepaid Insurance		2,001.35	$ 83,544.32
Other Assets			
Deposit—Missouri State Highway			50.00
Investments			
United States Government Bonds		$ 11,000.00	
Certificates of Deposit		13,231.01	24,231.01
Fixed Assets			
Land		$ 12,832.10	
Buildings		20,103.19	
Distribution System		1,772,922.47	
Towers and Reservoir		224,146.75	
Pump Houses		43,795.66	
Pumps and Motors		30,910.79	
Meters		398,231.22	
Compressors		6,674.93	
Furniture and Fixtures		20,018.77	

Equipment		25,881.10	
Operating Tools		2,857.38	
Automobiles and Trucks		18,732.22	
Total		$2,577,106.58	
Less—Reserve for Depreciation		467,341.28	2,109,765.30
Inventory			
Pipe Line and Connection Materials			35,052.23
Sinking Fund			
Cash in Grandview Bank		$ 14,917.19	
Certificates of Deposit		68,601.44	83,518.63
TOTAL ASSETS			$2,336,161.49

Public Water Supply District No. 1 of Jackson County, Missouri

BALANCE SHEET OCTOBER 31, 1966

LIABILITIES

Current Liabilities			
Accounts Payable		$ 14,762.26	
F.I.C.A. Taxes	$ 203.88		
Federal Withholding Taxes	697.00		
	$ 900.88		
Less—Depositary Receipt	697.00	203.88	
Missouri Sales Tax		682.80	
Missouri Withholding Taxes		44.45	$ 15,693.39
Other Liabilities			
Water Service Deposits—Customers		$ 29,093.53	
Developers' Rebates		139,990.58	
Developers' Advance Capital		14,831.63	
Missouri Highway Commission		55,349.67	239,265.41

Bonded Debt			
Special Obligation Bond, Principal and Interest, payable out of net income from operation of the district		$ 84,625.32	
General Obligation Bonds, Principal and Interest, payable out of sinking fund created by direct tax levy on property within the district		197,562.85	282,188.17
Reserve for Retirement and Interest			
General Obligation Bonds			
Balance October 31, 1965	$ 77,704.53		
Tax Collections during year	20,843.62		
Interest on Certificates of Deposit	1,852.40	$ 100,400.55	
Less — Principal and Interest Payments		16,881.92	83,518.63
Surplus			
Contributed by Public Works Administration		$ 136,462.42	
Donated Surplus		233,623.63	
Tax Collections applied in payment of General Obligation Bonds		362,117.51	
General Obligation Bonds Premium		3,310.50	
Equity Transfer to Kansas City, Missouri		(961,402.67)	
Operating Profit, Balance October 31, 1965	$1,907,984.33		
Net Profit—Fiscal Year Ended October 31, 1966	33,400.17	1,941,384.50	1,715,495.89
TOTAL LIABILITIES			$2,336,161,49

APPENDIX K

Transcript of Testimony of Mark Lucas, Investment Broker

Q. If another municipality or another water company constructed or proposed to construct competing lines, would you say that that would or would not affect the bondholders of Public Water Supply District No. 1?

* * *

A. Yes, any infringement on the boundary lines or the covenants of the bond issue or anything that might cause the original borrower to have trouble, any contemplation of that would be very detrimental. Actually, if Kansas City, Missouri steps in a little piece here and—

* * *

Q. (By Mr. Hess) If the practice, or if the acts which brought about this application for a temporary injunction were permitted to continue in a progressive fashion, would you say that that would be beneficial or detrimental to the bondholders of Public Water Supply District No. 1?

* * *

A. It definitely would affect the bondholder.

Q. (By Mr. Hess) Do you know, in your experience, of any water or other utility situation where revenue bonds of competing facilities can be sold?

A. Revenue Bonds?

Q. Yes. A. I can't think of a situation in the Middle West where you could, where they have issued revenue bonds to build a competing system. I can—I can name you a few towns where they have issued general obligation bonds and built a competing electric system, but answering your question, I can not think of any where they have issued revenue bonds to build a water system, competing water system, a municipal competing—a municipality competing.

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Authorities

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 1239

JACKSON COUNTY PUBLIC WATER SUPPLY DISTRICT No. 1,
Petitioner,

vs.

ONG AIRCRAFT CORPORATION, CITY OF KANSAS CITY, MISSOURI, ILUS W, DAVIS, Successor to H. Roe Bartle, Mayor of Kansas City, Missouri, HUGH G. CARR, Director of Water, Kansas City, Missouri, and EARL BROSNAHAN,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE KANSAS CITY COURT OF APPEALS OF THE STATE OF MISSOURI

INTRODUCTION

Respondents contend that the judgments of the State courts are correct and that certiorari should be denied.

JURISDICTION

Title 28, U.S.C.A., Section 1257(3), is supplemented by Supreme Court Rule 19(a) and Supreme Court Rule 23 (f). Respondents deny that this Court has jurisdiction, because no Federal question was decided by the State court, and no Federal questions were presented by Petitioner in the State courts.

QUESTIONS PRESENTED

Respondents deny that the questions suggested by Petitioner were before the State courts. The only questions presented in the State courts were whether Chapter 247, Revised Statutes of Missouri 1959, granted to the Water District an exclusive and monopolistic right to sell water within its district and whether the City of Kansas City granted such exclusive right by the terms of a certain contract dated July 7, 1961, entered into by Jackson County Public Water Supply District No. 1 and the City of Kansas City (Exhibit 1, R 23, 24).

Respondents deny that any question respecting constitutional rights of a federally financed public water district was presented or considered in the State courts, and consequently such question is not here for consideration by this Court.

LACK OF CONSTITUTIONAL PROVISIONS INVOLVED

Respondents deny that any U. S. constitutional provisions are involved because none was pleaded or presented in the State courts, and consequently none is involved for consideration by this Court.

RESPONDENTS' STATEMENT

Petitioner's Statement contains so many immaterial observations by Petitioner and is so completely interspersed with argument and misstatements instead of being confined to a concise statement of the case, containing the facts material to the consideration of the questions presented, that Respondents feel compelled to reject Petitioner's Statement and offer for the Court's consideration the following Statement:

In October, 1962, the Respondent, Ong Aircraft Corporation (hereinafter referred to as Developer), platted a tract of land containing 98.4 acres in Jackson County, Missouri, for residential development known as Crossgates Subdivision. The total platted lots were 372 in number, of which number 195 lots lay within the corporate limits of Kansas City, Missouri (hereinafter referred to as City) and the remaining 177 lots, comprising 41.59 acres, lay within the geographical area of Petitioner, Jackson County Public Water Supply District No. 1 (hereinafter sometimes referred to as District and sometimes referred to as Petitioner). On October 18, 1962, the Developer entered into a written contract with the City (Exhibit 14, R 81, 85) wherein the Developer agreed to construct at the Developer's own cost and expense and in accordance with the required specifications of the Water Director of the City, water mains, water lines, conduits and fire hydrants throughout the entire Crossgate Subdivision for the future furnishing of water by the City to future property owners and prospective residents of the subdivision.

In December, 1962, the District filed an injunction suit in the Circuit Court of Jackson County, Missouri, in which

suit the District sought to enjoin both the completion of the construction of the water lines and the carrying out of the contract of October 18, 1962, between the City and the Developer. Only 177 lots lying within the geographical area of the District are involved in this litigation. The District asserted in both the trial court and the appellate courts that the District had an exclusive and monopolistic right to furnish water to future consumers within the geographical area of the District for two alleged reasons; (1) that a contract between the District and the City made July 7, 1961 (Exhibit 1, R 23, 24) granted the District that exclusive right and (2) that such alleged exclusive right was granted the District by the terms of the Missouri State Statutes which created the District, being generally Chapter 247, Revised Statutes of Missouri, 1959.

The District's temporary injunction was dissolved by the trial court on April 9, 1963 (R 324, 325, 326) and on August 14, 1963, the trial court entered judgment denying District's petition for permanent injunction (R 362, 363) (Appendix B to petition herein.)

District's appeal to the Missouri Supreme Court was transferred by the Missouri Supreme Court for lack of jurisdiction to the Kansas City Court of Appeals (388 S.W.2d 893), which latter court affirmed the judgment of the trial court on October 3, 1966 and on December 5, 1966, denied District's Motion for Rehearing or in the Alternative to Transfer to the Supreme Court, the opinion of the Kansas City Court of Appeals being reported in 409 S.W.2d 222 (Appendices A and C to petition herein). Thereafter, on January 4, 1967, the District filed in the Supreme Court of Missouri District's Application to the Supreme Court for Order to Court of Appeals to Transfer the cause to the Supreme Court for Review, alleging in its application that the opinion of the Kansas City Court of Appeals was in con-

flict with other Missouri Appellate Court opinions (Appendix D to petition herein). District's application was by the Missouri Supreme Court denied on January 9, 1967. Thereafter, District filed its Motion for Leave to File Motion for Rehearing and Reconsideration of the Court's Order Denying District's Application to Transfer this case from the Kansas City Court of Appeals, again alleging conflict of the opinion of the Kansas City Court of Appeals with other Missouri Appellate Court opinions. This Motion for Leave filed by the District was denied by the Supreme Court of Missouri on January 20, 1967 (Appendix F to petition herein). At no time in the State proceedings was any claim made by the Petitioner that there was any violation of U. S. constitutional rights, or that any Federal statute or any Federal question was in issue.

Thereafter the District filed in this Court its Petition for Writ of Certiorari which petition is now before this Court for consideration.

REASONS FOR DENYING THE WRIT

Petitioner's Petition for Writ of Certiorari should be denied for the following reasons:

1. No Federal question was raised or presented in the State courts.

2. No U. S. constitutional question was presented in the State courts.

3. Petitioner's belated attempt to raise Federal questions by incorporating same in its petition for certiorari comes too late.

4. Alleged conflict between State courts' decisions does not constitute grounds for certiorari where no Federal questions are involved.

5. Petitioner had at all times full opportunity to raise a Federal question or U. S. constitutional question at all stages of the proceedings in the State courts but failed to do so.

1. No Federal question was ever raised or presented in the State courts in this action. Petitioner fails to cite any instance where a Federal question was presented in the State court proceedings as required by Supreme Court Rule 23(f). Supreme Court Rule 19(a) makes provision for the granting of a writ of certiorari "where a state court has decided a federal question of substance not theretofore determined by this court or has decided it in a way probably not in accordance with applicable decisions of this court." From the character of the reason indicated by this rule, it is quite apparent that a writ of certiorari should not be issued to a State court when no Federal question has been raised or decided in the State court. West's Federal Practice Manual Vol. 3, Section 3825. As stated by Mr. Chief Justice Hughes in *Lynch et al.* v. *People of New York,* 55 S. Ct. 16, l.c. 17, 293 U.S. 53, l.c. 54 (1934).

> "It is essential to the jurisdiction of this Court in reviewing a decision of a court of a state that it must appear affirmatively from the record, not only that a federal question was presented for decision to the highest court of the state having jurisdiction, but that its decision of the federal question was necessary to the determination of the cause, and that *it was actually decided* or that the judgment as rendered could not have been given without deciding it." (Emphasis supplied).

Petitioner devotes many pages of its argument to a discussion of the Agricultural Act of 1961, Public Law 87-128 (Title 7, U.S.C.A., Section 1926, and Title 42, U.S.C.A., Section 1492(b)(1)). Petitioner admits, however, that it was not even aware of the existence of these laws at the

time of the consideration of this litigation in the State courts (P. 7, Petitioner's Petition). This admission should be convincing proof that the question was never presented in the State courts. Respondents would respectfully remind the Court that the excerpt from a paper presented by the Administrator of the Farmers Home Administration, quoted on page 11, and the statistics quoted on page 12 of Petitioner's Petition as well as Petitioner's Appendices I and J and Petitioner's letter at Appendix A24 and A25 are not part of the record in this case.

2. The averment in the District's petition for injunction filed in the trial court alleging that the acts of the defendants were "in violation of the constitutional and statutory rights of plaintiff" (R 3) without setting out and pleading specifically the particular sections or articles of the U. S. Constitution claimed violated, was not sufficient pleading to raise any U. S. constitutional question for decision in the State courts.

State v. *Sappington*, 260 S.W.2d 669 (Mo. Sup. 1953).

Baker v. *Baker*, 274 S.W.2d 322 (Mo. App. 1954).

Petitioner does not cite a single instance of testimony being offered or evidence being presented in the State courts to support District's alleged contention that its U. S. constitutional rights had been violated. When the District's first appeal from the judgment of the trial court to the Missouri Supreme Court was challenged for lack of jurisdiction in the Supreme Court, and the Missouri Supreme Court transferred the appeal to the Kansas City Court of Appeals because the Supreme Court did not have jurisdiction of the appeal, no claim was made by the District or presented to the court that any constitutional question was involved in these proceedings. Had such constitutional question been shown, no transfer of the appeal would have been made by

the Supreme Court of Missouri to the Kansas City Court of Appeals. The Transfer of the appeal is reported in 388 S.W.2d 893.

3. Petitioner's belated attempt to raise for the first time a Federal question by incorporating the Federal question in its Petition for the Writ of Certiorari does not give this Court jurisdiction. The burden is on the Petitioner to show that the constitutional provision of Article VI of the U. S. Constitution and Section One of the Fourteenth Amendment to the U. S. Constitution and Section 306 of Public Laws 87-128 (Title 7, U.S.C.A., Section 1926 and Title 42, U.S.C.A., Section 1492) were raised by the District in either the State trial or appellate Courts. Petitioner's attempt to inject these issues by incorporating them for the first time in its petition for certiorari will not give this Court jurisdiction.

Hiawassee River Power Co. v. *Carolina Tennessee Power Co.*, 40 S. Ct. 330, 252 U.S. 341 (1920).

36 Corpus Juris Secundum, Section 274(2), p. 750.

4. The District's contention that the unanimous opinion of the Kansas City Court of Appeals in this case is in conflict with *Taylor* v. *Dimmit*, 78 S.W.2d 841, was overruled by both the Kansas City Court of Appeals and by the Supreme Court of Missouri as the facts in the two cases are easily distinguishable. Furthermore a conflict between State courts' decisions does not constitute grounds for a Writ of Certiorari by this Court where no Federal question is involved.

5. Respondents point out that the Petitioner had every opportunity to raise a Federal question at every stage of the state proceedings, but failed to do so. The significant point of all the pleadings and all of the evidence and all of the motions at all stages of the State court proceedings is

that no attempt was made to raise or preserve a Federal question or a U. S. constitutional question. As an afterthought of Petitioner's counsel, now for the first time, an attempt is made to inject into the proceedings certain provisions of the Agricultural Act of 1961, and certain sections of the U. S. Constitution, none of which was presented or considered by the State courts. The claim of "surprise" as proclaimed by Petitioner appears from its petition to be either inadvertence as to what the law is (p. 7, Petitioner's Petition) or some desperate attempt at this late stage of this controversy to gain relief when no such rights were preserved, nor were such rights ever in controversy in the State courts. Every opportunity was available to the plaintiff below in the State courts to present evidence on a Federal question or a U. S. constitutional question, but none was ever presented. Petitioner does not come within the principle of *Saunders* v. *Shaw*, 37 S. Ct. 638, 244 U.S. 317, cited by Petitioner, because Petitioner had every opportunity to raise its Federal or U. S. constitutional question in the State courts but of its own volition failed to do so.

Respondents cannot permit to go unchallenged Petitioner's misstatement that the testimony of Petitioner's witness, Mark Lucas, was not controverted (P. 6, Petitioner's Petition). In marked contrast to the testimony of witness Lucas, witness Bill T. Wall, Vice-President of a large investment banking house, testified that the service of water by Kansas City in the Crossgates Subdivision would not be harmful to the holders of the Water District's bonds (R 268, lines 17 et seq., R 269, 270, 271, lines 1-4). Both the trial court (R 269), (Finding of Fact No. 10) and the Appellate Court (408 S.W.2d 226, l.c. 231) upheld witness Wall's testimony.

CONCLUSION

For the foregoing reasons Respondents respectfully submit that the Writ of Certiorari petitioned for should be denied.

Respectfully submitted,

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FILED
JUN 16 1967
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

MARCH TERM, 1967

No. 1239

JACKSON COUNTY PUBLIC WATER SUPPLY DISTRICT No. 1,
Petitioner,

vs.

ONG AIRCRAFT CORPORATION, CITY OF KANSAS CITY, MISSOURI, ILUS W. DAVIS, Successor to H. Roe Bartle, Mayor of Kansas City, Missouri, HUGH G. CARR, Director of Water, Kansas City, Missouri, and EARL BROSNAHAN,
Respondents.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

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Respondents.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner, Jackson County Public Water Supply District No. 1 ("District"), prays that this Court grant a rehearing of its Order of May 22, 1967, denying the Petition for Writ of Certiorari and that a Writ of Certiorari issue to review the judgment of the Kansas City Court of Appeals of the State of Missouri in the above-entitled case as prayed for in the petition filed April 8, 1967.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT

1. The "intervening circumstances of substantial and controlling effect," and the "other substantial grounds available to petitioner, although not previously presented," as provided in Rule 58, will be discussed under paragraphs 3 and 4 below.

A denial of a Petition for Certiorari does not in itself reflect the grounds for denial. In this case the basis for denial can only be ascertained from the Respondents' Brief in Opposition to the Petition, or a review of the reasons set forth in the Petition for Certiorari. As petitioner views this case only three basic grounds for denial are possible.

The opposition brief claims that the Federal question had not been raised early enough, or with required particularity. As pointed out in the Petition and in the Brief in Opposition, the District's original petition for injunction in the trial court alleged that the acts of the defendants were "in violation of the constitutional and statutory rights of the plaintiff." (R-3). The Petition for Certiorari pointed out that the trial court ruled that "No Constitutional or statutory rights of the plaintiff have been violated or impaired by any contracts, agreements or the conduct of the defendants, or any of them." (Pet. Cert. A-14). Since this is the first opportunity to have raised the question, and since the trial court ruled on the question of *all* Constitutional rights (Federal or State), and since the Petition for Certiorari further describes the "surprise" manner in which the Kansas City Court of Appeals decision became final (Pet. Cert. 7), we must assume that this was not the basis of the denial.

2. The Petition for Certiorari describes in considerable detail the question of "imperative public importance" pointing out that the Kansas City Court of Appeals' decision has put in jeopardy some $13,000,000 of revenue bonds issued by water districts similarly situated to petitioner, subject to encroachment, and guaranteed by the United States through the Farmers Home Administration. Because it was so clearly pointed out that the State of Missouri was, of all the states, the outstanding beneficiary of this type of Federal assistance, and because $13,000,000 of Federally guaranteed bonds is so definitely a matter of public importance, we cannot assume that failure to show public importance was a primary ground for denial.

3. Petitioner must, therefore, take the position that the only plausible grounds for denial was that the Supreme Court felt that petitioner did not occupy a position of protection under the provision of the Agricultural Act of 1961, or its predecessor acts, simply because it was the recipient of a *grant* and did not obtain its assistance by loan or guaranty. The petitioner feels that possibly the Petition for Certiorari did not go into great enough detail in discussing this particular point. As an "intervening circumstance" petitioner has uncovered its original application for Federal assistance to the Public Works Administration in 1935. In those days construction grants and loans were obviously available*, and applications for both types of assistance to petitioner were made. A copy of that original application in its entirety is herewith attached and made a part of this Petition for Rehearing and marked Appendix L. According to the affidavit attached hereto and marked Appendix M, the applied for grant was given, but the application for loan was probably with-

*1933, Title II, Public Works & Conservation Projects Act, June 16, 1933.

drawn because private investment sources ultimately supplied the money. Appendix M further confirms that the petitioner, from and after 1936, had sizable general obligation and revenue bond issues outstanding, and that part of the initial revenue bond issue was not paid off until the fall of 1962. Historically, petitioner issued its original revenue bonds in the amount of $84,000. It issued $180,000 of additional refunding revenue bonds in 1952, and an additional $250,000 in revenue bonds in 1958. Simultaneously, the District had outstanding at all times, approximately equivalent amounts of general obligation bonds. Consequently, the District has constantly, since 1937, had outstanding substantial balances of special revenue bonds, even to this date.

Had the applied-for assistance in the form of a loan filed by petitioner been granted, there would have been no doubt but that the petitioner would have been entitled to the protection provided in Paragraph B of Section 306 of the Agricultural Act of 1961, because the 1962 encroachment would have reduced petitioner's territory. It should be pointed out at this stage that one of the conditions of the loan applied for by petitioner in 1935, and the grant simultaneously applied for, and later given, is found in that original application (Paragraph 12, Page ~~L40~~ L10 attached hereto), "The project will not compete with an existing facility." This raises a unique Federal question which was not clearly presented by the Petition for Certiorari, and which we hope to more clearly define by this Petition for Rehearing. Does the fact that petitioner was the recipient of a grant of $136,000 plus, and did not receive its assistance in the form of a government loan, (although originally applied for) but instead borrowed its revenue bond money from the public through private sources, mean that it was without any Federal protection

at all? The obvious answer is no. The purposes of The Public Works and Conservation Projects Act of 1933, The Water Facilities Act of August 28, 1937, the purposes of the Agricultural Act of 1961, which repealed the earlier act, and the purposes of the 1965 amendment are all contained in legislative expressions, to provide to the rural areas pure water at lower water rates, unavailable to these people except by the public assistance provided. Typical of this is a legislative expression of the purpose, contained in a letter from the Secretary of Agriculture to the Senate Committee on Agriculture and Forestry in connection with the 1965 act. This legislative expression is as follows,

> "In administering the present loan program for rural water systems, the Farmers Home Administration has found that many rural communities cannot afford the entire cost of needed water supply and distribution facilities due to either low income of many of the prospective users or the high cost of providing distribution systems, including, where necessary, such installations as water treatment plants, in sparsely settled areas." (United States Code Congressional and Administrative News, 89th Congress, First Session, 1965, Vol. 2, Page 3,412)

"The purpose of the aid by grant was the same as aid by loan, and the same as aid by guaranty. Historically, grants and loans for construction purposes were provided between 1933 and 1961. Between 1961 and 1965, loans and guaranties only were provided, and after 1965, grants, loans, and guaranties have been available. It should be further pointed out that according to the Engineer's Memorandum (Appendix L attached), Kansas City, Missouri, was supposed to be the sole supplier of the applicant, and according to Appendix M attached and the original record, Kansas City, Missouri, was in fact the sole supplier

of petitioner from 1937 to date. By reason of these thirty years of experience, Kansas City, Missouri, enjoyed the benefits of a new customer in the form of the petitioner only by virtue of the original Federal grant, and hence, Kansas City, Missouri, was a part of the original agreement in that grant that, "The project would not compete with an existing facility."

It is the contention of the petitioner that the purpose of all of these Project Assistance Acts was to furnish rural residents with cheap water; that the government was just as interested in protecting the territorial integrity of a water supply relying on revenue bonds whether the government assisted the supplier by grant or by loan. This protection was made more express and more specific in the Agricultural Act of 1961. It failed to expressly cover the grant situation because grants were temporarily eliminated during the '61-'65 period. This, however, did not mean that the government was eliminating protection of prior grant situations which still needed the protection in order to accomplish the basic purposes of the legislation. The legislative purpose of all of these acts could not have been accomplished if the recipient of one type of the aid was unprotected, while the recipient of other types was fully protected. The whole purpose of the act would have been thwarted by any other interpretation. The term of the protection, as expressed in some of the acts, was for bonds payable over 40 years, and the only time the protection against encroachment of an area was lifted was when the government had recovered its initial aid. In our situation, it should be pointed out that the government assistance was permanent, but that question need not be decided because the happening of the encroachment in this case was within the 40-year period, and likewise within the term of the initial revenue bond issue.

The language of the legislative history of the Agricultural Act of 1961, states that Section 1926 (b) was added, "to *assist* in protecting the territory served by such an association facility against competitive facilities. . . ." (P. 2309, U. S. Code Congressional and Administrative News, Vol. 2, 1961). The word *assist* implies that there was some prior protection from encroachment given to these associations. This protection was provided by a line of cases which hold that where there is an exclusive contract between an association and a municipality to supply water (to the municipality), the municipality may not under the authorization of state statute or municipal ordinance impair the obligation of that contract (Art. 1, 10, d. 1, U. S. Constitution) by attempting to establish its own water supply facility in competition with the association. (*Vicksburg* v. *Vicksburg Waterworks Co.*, 202 U.S. 453, 50 L. Ed. 1102, 26 S. Ct. 660, *Walla Walla* v. *Walla Walla Water Co.*, 185 U.S. 65, 46 L. Ed. 808, 22 S. Ct. 585, *New Orleans Water-Works* v. *Rivers*, 115 U.S. 674, 29 L. Ed. 525, 6 S. Ct. 273.) One such case involves a water supply company which was financed by revenue bonds (*New Orleans Water-Works* v. *Rivers, supra*), as was the Jackson County Public Water Supply District, No. 1. In all the cases cited above the plaintiff sought injunctive relief, as does the petitioner.

As a condition to obtaining a loan and grant from the Federal Emergency Administration of Public Works the plantiff agreed that, "(T)he project will not compete with an existing facility." (See P.W.A. Form No. 156, Page 140.) If this condition, and the 1961 Agricultural Act, 1926 (b), and the cases in the preceding paragraph are construed together, it would mean that the acts of the defendant here complained of should be enjoined in that: (1) There has been a direct violation of the

Agricultural Act of 1961, 1926 (b); (2) There has been an impairment of the plaintiff's contract obligations under Art. I, §10, Cl. 1 of the U. S. Constitution.

It should be pointed out that the City of Kansas City was, and is now the sole supplier of water to the Jackson County Public Water Supply District No. 1, and only by this grant of federal funds could the city have had a customer to which to supply water. Therefore, the protection from encroachment which we seek, also is strengthened by the fact that the party whom we seek to enjoin benefitted by the federal grant, and should now be estopped to deny protection to the petitioner's water supply area.

4. While the above cases are included in this petition for the purpose of showing that petitioner had federal protection as a grantee of federal aid, our discussion of them has brought out another federal question and another constitutional infraction, namely an impairment of petitioner's contractual obligation. (See *Vicksburg Waterworks Co.* v. *Vicksburg,* 185 U.S. 65, 46 L. Ed. 808, 22 S. Ct. 585.) This is a reason supplementary to the above cited reasons for granting the petition for rehearing. The trial judge ruled (See Conclusion 6-Appendix B, p. A-14) that there had been no constitutional contractual impairment, thereby indicating that this federal question had been previously presented. Art. I, Sec. 10, Cl. 1, U. S. Constitution. In referring to impairment of contracts it is obvious that he was referring to Federal rights since there is no such State Constitutional provision. (See *New York ex rel. Bryant* v. *Zimmerman,* 278 U.S. 63, 67-68.)

CONCLUSION

The petitioner felt that the Petition for Certiorari in this case was quite meritorious, and in this regard the court apparently felt otherwise. The petitioner argued in that petition that a Federal question of "Imperative public importance," was raised in the plaintiff's petition in the trial court by an allegation that Constitutional rights had been violated or *impaired*. Article VI of the United States Constitution was pointed to because the petition pointed out that $13,000,000 of outstanding revenue bonds of Missouri Water Districts, similarly situated to petitioner, had been guaranteed by the United States and that those issues were in great jeopardy because of the decision of the Kansas City Court of Appeals authorizing an encroachment by Kansas City, Missouri, upon the territory of the petitioner and therefore a cutting down of its revenue producing area. We further pointed out that the petitioner was federally financed by a Grant-In-Aid of approximately $136,000 given to it by the United States in 1937. The Petition for Certiorari further argued that the 14th Amendment of the United States had likewise been violated because the Kansas City Court of Appeals decision had removed petitioner from an eligible classification for future grants, guaranties, and loans, by reason of the fact that its revenue producing area had been impaired.

Since the filing of the Petition for Certiorari, petitioner has been able to solidify its reason for believing that a federally assisted project must be protected from encroachment. The petition for rehearing has disclosed without contradiction that one of the conditions of the original Grant-In-Aid was that, "The project would not compete with an existing facility," that one of the respondents, Kansas City, Missouri, was a party to the agreement in which that condition of the grant was con-

tained by virtue of the fact that the municipality in fact enjoyed the benefits of that grant. The Petition for Rehearing likewise shows without contradiction that this conduct on the part of the respondent was an impairment of a contract in violation of Article I, Section 10, Clause 1 of the United States Constitution, the Impairment of Contracts provision, and that this is a question which was initially ruled by the trial judge. We know that this Court is reluctant to grant Rehearing and grant Certiorari, but petitioner feels that this is one case in which the Court's consideration is extremely deserving.

Respectfully submitted,

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Of Counsel

CERTIFICATE OF COUNSEL

We hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

.....

ALBERT THOMSON
Counsel for Petitioner

June ....., 1967.

APPENDIX L

Application Resolution

Resolution No. .....

A Resolution Authorizing the President of Jackson County Missouri Public Water Supply District No. 1 to File an Application to the United States of America Through the Federal Emergency Administration of Public Works for a Loan and Grant to Aid in Financing the Construction of a Suburban Waterworks Distribution System within the District and Designating Charles A. Haskins and/or R. O. Ruble, Consulting Engineers, and Jerome Walsh and/or Andrew Ellison, Attorneys, and R. D. Barry, Clerk, to furnish such Information as the Government may Request.

Be it Resolved by the Board of Directors of Jackson County Missouri Public Water Supply District No. 1:

SECTION 1. That H. T. Abernathy, President, be, and he is, authorized to execute and file an application on behalf of Jackson County Missouri Public Water Supply District No. 1 to the United States of America for a loan and grant to aid in financing the construction of a suburban waterworks distribution system within the District.

SECTION 2. That Charles A. Haskins and/or R. O. Ruble, Consulting Engineers, and Jerome Walsh and/or Andrew Ellison, Attorneys, and R. D. Barry, Clerk, be, and they are, hereby authorized and directed to furnish such information as the United States of America through the Federal Emergency Administration of Public Works

may reasonably request in connection with the application which is herein authorized to be filed.

Passed and approved this 23rd day of November, 1935

(signed) H. T. ABERNATHY President
Jackson County Missouri Public
Water Supply District No. 1

Attest:

(signed) R. D. BARRY Clerk
Jackson County Missouri Public
Water Supply District No. 1

CERTIFICATE OF CLERK

I, R. D. Barry, the duly elected, qualified and acting Clerk of the Jackson County Missouri Public Water Supply District No. 1, do hereby certify that I have compared the attached copy of a resolution entitled

> "A Resolution Authorizing the President of Jackson County Missouri Public Water Supply District No. 1 to File an Application to the United States of America Through the Federal Emergency Administration of Public Works for a Loan and Grant to Aid in Financing the Construction of a Suburban Waterworks Distribution System within the District and Designating Charles A. Haskins and/or R. O. Ruble, Consulting Engineers, and Jerome Walsh and/or Andrew Ellison, Attorneys, and R. D. Barry, Clerk, to furnish such Information as the Government may Request,"

with the original of such resolution on file in my office and that the same is a true and correct copy of such resolution which was regularly adopted at a meeting of the Board of Directors, duly held on the 23rd day of November, 1935.

Dated this 23rd day of November, 1935.

(signed) R. D. BARRY Clerk
Jackson County Missouri Public
(SEAL) Water Supply District No. 1

Memorandum

TO ACCOMPANY APPLICATION OF JACKSON COUNTY MISSOURI PUBLIC WATER SUPPLY DISTRICT No. 1

This Memorandum is intended to give a short history of this project and the applications which have been filed for P.W.A. loans and grants to finance the project.

In November 1933 a private Company, known as The South Jackson County Missouri Water Company was organized on a non-profit and cooperative basis, for the purpose of constructing a water supply system in the area covered by this application. It was necessary to form a private company at that time because there was no State law under which a public water supply district could be formed in an unincorporated district. This private Company made application to the Public Works Administration for a loan and grant in the amount of $190,000.00. This application was carefully examined by the Public Works Administration but was never approved on account of the fact that the application came from a private corporation instead of from a public body. However, the application was never finally rejected, but was held in abeyance until such time as a statute could be enacted providing for the formation of a public water supply district.

A State law has now been enacted providing for the formation of suburban water supply districts, and this law became effective about September 1, 1935.

On account of the fact that the law did not become effective until about September 1, 1935, it was necessary to file an application on behalf of the unformed district ahead of the dead-line set by the Public Works Admin-

istration for receiving applications. Consequently, on August 28, 1935, the Directors of the old South Jackson County Missouri Water Company filed an application with the Public Works Administration on behalf of the unformed District. Under this application the scope of the project was increased considerably and the estimated cost was $327,000.00.

The Water Supply District has now been incorporated by the Court and such incorporation has been ratified by a vote of the people within the District, in accordance with the law. The present application is being executed by the officers of the newly formed District, and this application is to take the place of the application filed on August 28, 1935. The present application differs slightly from the last application filed. At the time the District was incorporated a small area in the northeast portion of the District was eliminated, which change eliminated water mains on Hillcrest Road north of Bannister Road, and on 87th Street. This change reduced the cost of the project from $327,000.00 to $306,000.00.

List of Drawings

The following drawings are included in Folders 2 and 4 but are omitted from all other folders:—

1 Map showing location of the project with respect to Kansas City;

2 Map showing the Water Supply District and the waterworks system.

L5

FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS

HAROLD L. ICKES, ADMINISTRATOR
WASHINGTON

Application for Loan and Grant

State .....

State File No. .....
(Not to be filled in by applicant)

The[1] Jackson County Missouri Public Water Supply District No. 1 (herein called the "Applicant"), hereby makes application to the United States of America through the Federal Emergency Administration of Public Works (herein called the "Government"), for a loan and a grant for the purpose of aiding in financing the construction of[2] a Suburban Waterworks Distribution System (herein called the "Project") the total cost of which is estimated to be $[3]306,000.00.

In the event this application is approved and the Government offers to assist in financing the construction of the Project, the Applicant, if it accepts such offer, will sell its obligations in an amount which, together with the grant, will, in the judgment of the Applicant and the Federal Emergency Administrator of Public Works, be sufficient to construct the Project, such obligations to be secured in such manner, to bear interest at such rate, to be in such form, to be payable at such time or times and at such place or places, to be in such denominations and to have such registration privileges as may be satisfactory to the Applicant and to said Administrator.

---

1. Insert correct corporate name of Applicant.
2. Describe Project briefly.
3. Insert estimated cost of Project.

It is expressly understood that if the Government makes the above requested loan and grant, the Applicant, in accepting such loan and grant proceeds, in expending the same, and in carrying out the construction of the Project, will abide by all rules and regulations prescribed by the Government.

IN WITNESS WHEREOF, the Applicant has caused this application to be duly executed in its name, this 23rd day of November, 1935.

[Seal]

Jackson County Public Water Supply District #1[1]
(signed) By H. T. Abernathy[4]
President[5]

FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS

HAROLD L. ICKES, ADMINISTRATOR
WASHINGTON

Engineering Information Supplied by Applicant

State .....

State File No. .....
(Not to be filled in by applicant)

Note.—Where questions cannot be adequately answered in the spaces provided below, attach answers on separate sheets giving them convenient reference numbers.

1. Name and address of applicant's engineer and/or architect; also of consulting engineer and/or consulting architect Charles A. Haskins, Consulting Engineer, 517 Finance Building, Kansas City, Missouri

---

4. Signature of officer authorized to execute Application.
5. Title of officer executing Application.

2. Attach general description, with drawings sufficient for a thorough understanding of the project and report of engineers or architect with pertinent design data, if available. See Exhibit 156-2

3. Estimate of cost of project:

a. Preliminary expenses ..... $ 1,000.00

b. Cost of land, rights of way, easements .... $ 1,500.00

c. Construction costs:

(Where a project comprises one or more separate buildings or other distinct units, the cost of each should be separately shown. The cost of each unit should be further broken down into the various items of work and appropriate quantities and unit prices applied to develop the total cost of the building or other structure.

Items of furniture and equipment, other than the usual service facilities such as plumbing, heating, ventilation and electrical, should be itemized and totaled separately.)

List of items of breakdown, giving quantities and unit prices:

See Exhibit 156-2 for detailed estimate .... $.....

..... $.....

..... $.....

Contingencies ..... $.....

Total Construction Cost $280,000.00

d. Engineering, architectural and other fees for technical service. The basis upon which this item is computed should be clearly indicated 5% ..... $ 14,000.00

e. Legal, administrative, and overhead costs to be financed from the proceeds of the loan and grant. This item should be subdivided to indicate clearly the purpose for which the funds are requested and the basis upon which they have been computed ..... $ 5,000.00

f. Interest during construction ..... $ 3,500.00

g. Miscellaneous costs in reasonable detail:

1. Elections $500.00
2. Publishing, advertising, etc. $250.00
3. Bond printing, etc. $250.00
4. ..... $.....

Total miscellaneous charges ..... $ 1,000.00

Total estimated cost of project $306,000.00

h. Amount of funds, if any, to be furnished by the applicant from sources other than the Government ..... $ None

i. Amount of loan and grant requested $306,000.00

4. Statement as to status of drawings and specifications with description of preliminary work done to date of application.

See Exhibit 156-4

	(1) Amount (Dollars)	(2) Percent of sub-total	(3) Percent of total allotment	(4) Daily average number to be employed
5. Estimated Division of Allotment:				
(a) Labor:				
(1) Unskilled	40,000.	45.	13.1	102.
(2) Intermediate	26,700.	30.	8.7	53.
(3) Skilled	20,500.	23.	6.7	21.
(4) Technical and clerical	1,800.	2.	0.6	3.
(5) Subtotal	89,000.	100	29.1	179.
(b) Superintendence	5,600.	xxx	1.8	4.
(c) Professional services	13,400.	xxx	4.4	6.
(d) Other expenses on project:				
(1) Materials, supplies and equipment	191,000.	96.4	62.4	
(2) Contingent expense	5,500.	2.8	1.8	
(3) Land, rights-of-way and purchase of existing facilities	1,500.	0.8	0.5	
(4) Subtotal, other expense	198,000.	100	64.7	
(e) Total	306,000.	xxx	100	189.

(f) Skilled labor to consist of following average daily number to be employed from various trades:

Number	Trade	Number	Trade
(1) 3	Tank erectors	(6) 0.5	Electricians
(2) 6	Ditching Machine Operators	(7)	.....
		(8)	.....
(3) 6	Plumbers	(9)	.....
(4) 1	Carpenters	(10) 3.5	Other trades
(5) 1	Bricklayers	(11)* Total 21	.....

*Same as 5 (a) (3).

6. Estimated expenditure per man-year of employment, $3,240.00. (State number of hours per month and wage rate basis (P.W.A., union scale, or other) used in 3 and 6.)

   See Exhibit 156-6

7. Estimated total man-hours: 137,000

8. Estimated period of preparation before work at site can be started 45 days.

9. Estimated daily average number of employees each month during execution of project:

1. 189	2. 189	3. 189	4. 189	5. 189	6. 189
7.	8.	9.	10.	11.	12.

10. Estimated elapsed time from beginning work to completion, 6 months.

11. (a) What part of labor on project would usually be handled by contract? 100%

    (b) What part of labor on project would usually be day labor? ....%

12. (a) If the project will compete with an existing facility, a complete description of the existing facility should be given, and should define its present physical condition.

    (b) If the project will compete with an existing facility the experience record of the existing facility for the past five years should be presented, if available, to show revenues, sales or service from which revenues derive, classified as to type, and valued as to rates, and maintenance and operating expense.

    (c) If the project will have a competing facility, the franchise, permit, or license under which the competing facility operates should be described.

    The project will not compete with an existing facility.

AFFIDAVIT

R. O. Ruble, being first duly sworn, says:

1. That the affiant has been authorized by the above-named applicant to furnish engineering information to the Federal Emergency Administration of Public Works to support the application of said applicant, dated .....;

2. That the information supplied on the above form and in the attached exhibits and statements is true, correct, and complete to the best of his knowledge and belief.

(signed) R. O. Ruble

Sworn to before me this 20th day of November, 1935.

(signed) Gertrude Rieger
Notary.

My commission expires October 10, 1938.

EXHIBIT 156-2

September 5, 1935

To the Board of Directors,
Jackson County Public Water Supply
District No. 1,
KANSAS CITY, MISSOURI

Gentlemen: —

In accordance with your instructions, we desire to submit herewith our report on the proposed Jackson County Public Water Supply District No. 1.

There is attached to this report a map showing the proposed waterworks system and also the boundaries of the proposed Water Supply District. The water system as laid out consists of 31.5 miles of mains, 150 fire hy-

drants, 550 service lines and meters, an elevated tank in the Grandview district, booster pumps at Holmes Park, and connection to the City water system, with master meter, at 75th & Prospect. The lines as laid out will reach 604 houses and other prospective customers. There are approximately 210 additional houses within the District which will not be reached.

The system as laid out will cost approximately $306,000.00, which cost will be financed by a loan and grant from the Federal Public Works Administration. The grant will be $137,700.00 and the loan $168,300.00. This loan should be secured with 50% general obligation and 50% revenue bonds.

The law under which it is proposed to construct and operate the system was passed at the last Legislature and became effective about September 1, 1935. It provides that public water supply districts may be incorporated by the Circuit Court upon a petition of the property owners in the District, which incorporation must later be ratified by the voters in the District. The law provides also for the issuance by the District of both general obligation bonds and revenue bonds, each in the amount of 5% of the assessed valuation of the taxable property in the District. These bond issues must be authorized at an election by two-thirds of the voters voting at the election. The general obligation bonds are to be retired by a tax levy. The revenue bonds are to be retired by the earnings from the sale of water.

The assessed valuation in the District is approximately $2,450,000.00. In order to retire the $85,000.00 in 20-year 4% serial bonds, it would be necessary to make an average levy of about $2.64 per $1000.00 assessed valuation during the 20-year period, assuming that the val-

uation would remain constant. If the assessed valuation increases, as it should as the District develops, the levy per $1000.00 valuation will decrease accordingly.

We have estimated that 480 customers the first year of operation, with an increase of 20 per year, will provide sufficient revenue to retire the $84,000.00 in 4% serial revenue bonds in 20 years.

In the following report we discuss completely the waterworks system as laid out, we make an estimate of cost, and discuss the operation of the system, especially as it affects the retirement of the debt.

If further information is required, we will be glad to supply it.

Respectfully yours,

Charles A. Haskins
By (signed) R. O. Ruble

ROR:GR

Report on Jackson County Public Water Supply District No. 1

STATUTORY PROVISIONS

The law under which it is proposed to build, finance and operate the proposed waterworks system is Senate Bill No. 2, of the 58th Missouri General Assembly. This law became effective approximately September 1, 1935.

SURVEYS

We originally made some surveys on this project several years ago. Since receiving your instructions, we have brought these surveys up to date and have prepared a map showing the location of all houses and other possible customers within the District. We have determined suf-

ficient elevations within the District to determine the necessity for pumping the water, and also to determine the approximate pressure which will obtain in the various parts of the District. We have also made investigations to determine the probable quantity of rock which will be encountered, and also to determine the presence of other unusual conditions affecting construction.

THE WATERWORKS SYSTEM

In general the project contemplates the purchase of water from the City of Kansas City, Missouri, and the distribution of it through a system of mains to the residents of the District. There are several points where connection to the City system could be made, but the most feasible point seems to be at 75th & Prospect, where the supply line can be tapped into a 20-inch City main. At this point there will be installed a master meter for measuring the water purchased by the District.

An 8-inch supply line will be run from 75th & Prospect to Holmes Park, at which point booster pumps will be installed for raising the pressure approximately 50 feet above the pressure maintained in the City water system at the point of connection. A 250,000 gallon elevated storage tank, approximately 100 feet high will be installed in the vicinity of Grandview, where the ground elevation is higher than at any point in the system.

The system consists of approximately 31.5 miles of 8, 6, 4 and 2-inch mains. These mains will all be of cast iron and will be laid and jointed in accordance with best modern practise. Valves will be installed at frequent intervals. There will be 150 fire hydrants, and plugged tees for many more future hydrants, and the system has been so proportioned and arranged that fire streams of good capacity can be obtained from all of them. There is also

included in the system 550 service lines to customers and 550 service meters. It is planned for the District to install a service line to the customer's property line and there install a meter in an outside meter setting in accordance with current good practise.

It is planned to construct, probably at Holmes Park, a small building which will house the offices of the District and will provide garage and shop space.

The topography of the ground in the District is such that pressures will vary from a minimum of approximately 45 pounds to a maximum of approximately 125 pounds.

COST OF THE SYSTEM

The following is the Estimate of Cost of constructing the waterworks system:

19,000	ft. 8-inch C.I. pipe	@ $ 1.50	$ 28,500.00
101,000	" 6-inch " "	1.10	111,100.00
44,000	" 4-inch " "	.80	35,200.00
2,500	" 2-inch " "	.55	1,375.00
110,000	lbs. fittings	.08	8,800.00
5,000	cu. yds. rock	3.50	17,500.00
10	8-inch gate valves	45.00	450.00
40	6-inch " "	30.00	1,200.00
35	4-inch " "	20.00	700.00
10	2-inch " "	16.00	160.00
150	fire hydrants	60.00	9,000.00
550	services and meters	35.00	19,250.00
	River crossing		1,500.00
	Railroad crossings		1,500.00
	Master meter and setting		1,500.00
1	250,000 gallon elevated tank		20,000.00
	Office, shop and pump station		10,000.00
	Tools and equipment		2,000.00
	Contingencies		10,265.00
	Engineering at 5%		14,000.00
	Preliminary expenses		1,000.00
	Legal and administrative		5,000.00
	Miscellaneous		1,000.00
	Land & right of way		1,500.00
	Interest during construction		3,500.00
		TOTAL	$306,000.00

PAYMENT FOR THE SYSTEM

Of the total cost of $306,000.00, $137,700.00 will be a Government grant and the remaining $168,300.00 can be borrowed from the Public Works Administration at 4% interest. It is tentatively planned to issue for this loan $84,000 in revenue bonds and $85,000.00 in general obligation bonds.

The assessed valuation of the District is approximately $2,450,000.00. If the $85,000.00 in general obligation bonds was to be retired at a constant rate of $4,250.00 a year, and if the assessed valuation remained constant during the life of the loan, the required tax levy per $1000.00 assessed valuation would be $3.12 the first year and $1.81 the last year. By varying the amount of the bond maturities so as to keep the fixed charges about constant during the 20-year period, the required tax levy, assuming a constant valuation, would be approximately $2.64 per $1000.00.

REVENUE FROM THE SYSTEM

NUMBER OF CUSTOMERS: The proposed water system reaches approximately 604 possible customers. It has been assumed that there will be 480 customers the first year of operation and that the number of customers will increase at the rate of 20 per year; which means that at the end of twenty years the number of customers would have increased 79%. The population of Washington Township, of which this District is a part, was 2,369 in 1910, 3,911 in 1920, and 9,951 in 1930. The Township increased in population more than 400% in the 20-year period from 1910 to 1930. Consequently, we believe that an assumption of 79% increase in the number of customers in twenty years is conservative.

RATE SCHEDULES: The following schedule of rates has been set up governing the sale of water:

First	2,000	gallons	per	month	@	$0.75	per	1000 gallons
Next	3,000	"	"	"		.50	"	"	"
Next	15,000	"	"	"		.40	"	"	"
Next	30,000	"	"	"		.30	"	"	"
Next	50,000	"	"	"		.25	"	"	"
Excess						.20	"	"	"

Minimum Bill $1.50 per month

SALE OF WATER: Based on a careful study of the the District and a comparison of the sale of water in similar small towns and districts, we have set up the following analysis of probable sales of water to a group of 500 customers:

No. of	Monthly Bill		Use of Water Gallons per Month	
Customers	Each	Total	Each	Total
200	$ 1.50	$300.00	2,000	400,000
150	2.00	300.00	3,000	450,000
100	3.00	300.00	5,000	500,000
30	5.00	150.00	10,000	300,000
10	12.00	120.00	30,000	300,000
5	18.00	90.00	50,000	250,000
3	24.25	72.75	75,000	225,000
1	50.50	50.50	200,000	200,000
1	110.50	110.50	500,000	500,000
				3,125,000
		Plus 15% waste		475,000
				3,600,000

gallons per month to purchase

Average bill about $3.00 per month

Assuming a population of 4 per customer, the per capita use would be about 60 gallons per day.

This group of 500 customers includes two golf courses, two high schools, two grade schools, 30 stores, 17 filling stations, 35 tourist cabins (not counted as separate houses), 15 road houses, 7 dairies, and numerous large private estates.

OPERATING COSTS: We have made the following estimate of cost of operating the system, based on the group of 500 customers:

1 Superintendent	$100.	per	month	$1,200.	per	year
1 Bookkeeper and clerk	100.	"	"	1,200.	"	"
1 Laborer, part time	50.	"	"	600.	"	"
Office maintenance, light, heat, etc.	40.	"	"	480.	"	"
Office supplies, postage, etc.	50.	"	"	600.	"	"
Truck, 1000 mi/mo @ 5¢	50.	"	"	600.	"	"
Tools and supplies	30.	"	"	360.	"	"
Miscellaneous	30.	"	"	360.	"	"
				$5,400.	"	"

5400/500 = $10.80 per customer per year

The cost of the 3,600,000 gallons of water estimated to be used each month by the group of 500 customers, according to the Kansas City, Missouri rate, will be as follows:

2,000	gallons	at	$0.25	$ 0.50
15,000	"	"	.23	3.45
15,000	"	"	.21	3.15
22,500	"	"	.20	4.50
22,500	"	"	.19	4.28
37,500	"	"	.17	6.38
37,500	"	"	.16	6.00
75,000	"	"	.15	11.25
150,000	"	"	.13	19.50
375,000	"	"	.11	41.25
2,843,000	"	"	.09	256.32

356.58 x 12 = $4,278.96 per year

The cost of pumping this water against a total head of approximately 100 feet, assuming a 60% efficiency of the pumping equipment and a power cost of 3 cents per kilowatt-hour, will be approximately $64.80 per month, or $777.60 per year. The total cost of the water will be—

Water purchase	$4,278.96	per year
Water pumping	777.60	" "

$5,056.56, or about $10.11 per customer per year.

OPERATING SURPLUS: The average annual revenue per customer is estimated at $36.00. The operating expenses are estimated to be $10.80 per year for office and labor, and $10.11 per year for water and pumping, or a total of $20.91 per year. This leaves an operating surplus of approximately $15.00 per customer per year.

PAYMENT OF REVENUE BONDS: The following Table shows for each year during the life of the revenue bonds the estimated number of customers, the operating surplus each year at $15.00 per customer per year, the fixed charges, the balance at the end of the year, and the accumulated balance each year during the period. The schedule of bond maturities has been arranged so as to make the fixed charges per customer somewhat near constant during the life of the loan:

APPLICATION OF OPERATING SURPLUS TO RETIREMENT OF $84,000.00 in 4% REVENUE BONDS

Year	Number of Customers	Operating Surplus at $15./Yr.	Fixed Charges: Interest 4%	Fixed Charges: Principal $84,000.	Fixed Charges: Total	Balance at End of Year	Accumulated Balance
1	480	$7,200.	$3,360.	—	$3,360.	$3,840.	$3,840.
2	500	7,500.	3,360.	—	3,360.	4,140.	7,980.
3	520	7,800.	3,360.	$1,000.	4,360.	3,440.	11,420.
4	540	8,100.	3,320.	1,000.	4,320.	3,780.	15,200.
5	560	8,400.	3,280.	2,000.	5,280.	3,120.	18,320.
6	580	8,700.	3,200.	2,000.	5,200.	3,500.	21,820.
7	600	9,000.	3,120.	3,000.	6,120.	2,880.	24,700.
8	620	9,300.	3,000.	3,000.	6,000.	3,300.	28,000.
9	640	9,600.	2,880.	4,000.	6,880.	2,720.	30,720.
10	660	9,900.	2,720.	4,000.	6,720.	3,180.	33,900.
11	680	10,200.	2,560.	5,000.	7,560.	2,640.	36,540.
12	700	10,500.	2,360.	5,000.	7,360.	3,140.	39,680.
13	720	10,800.	2,160.	6,000.	8,160.	2,640.	42,320.
14	740	11,100.	1,920.	6,000.	7,920.	3,180.	45,500.
15	760	11,400.	1,680.	7,000.	8,680.	2,720.	48,220.
16	780	11,700.	1,400.	7,000.	8,400.	3,300.	51,520.
17	800	12,000.	1,120.	7,000.	8,120.	3,880.	55,400.
18	820	12,300.	840.	7,000.	7,840.	4,460.	59,860.
19	840	12,600.	560.	7,000.	7,560.	5,040.	64,900.
20	860	12,900.	280.	7,000.	7,280.	5,620.	70,520.
Totals		201,000.			$130,480.	$70,520.	

The above Table shows that the anticipated earnings will retire the revenue bond issue in 20 years and show a surplus of approximately $70,520.00.

EXHIBIT 156-4

Preliminary work has been completed, and includes careful field surveys of the project and estimate of cost. Final plans and specifications are in progress and can be completed in about 45 days.

EXHIBIT P.W.A. 156-6

The estimates of employment are based on a 6-month construction period, a 130-hour working month, and the following wage scale:

Unskilled labor	$0.50	per hour
Intermediate "	.65	" "
Skilled "	1.25*	" "

*Union scale for most of the trades.

Total Project Cost $306,000.00

189 men for 6 months, or
94.5 men for 1 year

Cost per man year $= \frac{306,000}{94.5} =$ $3,240.00

FEDERAL EMERGENCY ADMINISTRATION
OF PUBLIC WORKS

HAROLD L. ICKES, ADMINISTRATOR
WASHINGTON

Financial Information Supplied by Applicant

State .....

State File No. .....
(Not to be filled in by applicant)

Applicant Jackson County Missouri Public Water Supply District No. 1

1. Assessed Valuation of Taxable Property (Current Year, 1934) $2,428,000.00 plus

See Exhibit 157-1

Percentage assessed value is of actual value about 75 percent.

2. Outstanding Debt As of Nov. 1, 1935:

(Date of application)

Bonds:	Amount
General Obligation Bonds (paid from taxes)	$ None
General Obligation Bonds (payable from taxes but paid from revenues)	None
Special Assessment Bonds	None
Revenue Bonds	None
Total funded debt	$ None

Notes, Etc.:	Amount
Bond anticipation notes	$ None
Tax anticipation notes	None
Warrants	None
Other (.....)	None
Total floating debt	$ None

3. Sinking Funds As of Nov. 1, 1935

(Date of application)

		For bonds payable from taxes	For all other bonds
Free cash	None	$.....	$.....
Cash in closed banks	None	.....	.....
Invested in applicant's bonds	None	.....	.....
Other investments	None	.....	.....
(Description)			
Total sinking funds	None	$.....	$.....

4. Overlapping Taxing Authorities:

	Outstanding debt	Assessed valuation
County	$1523742.28	$565470901.20
City, town, or village	.....	.....
School district Cons. Dist. #1	110000.00	1298200.00*
" " " " #2	113500.00	24440.00*
" " " District #4	46000.00	750750.00*
" " Center	91000.00	109270.00*
" " Dallas District	10000.00	19130.00*

*Within the District.

5. Ad Valorem Tax Rate:

(Current Year, 193..)

	Rate per $1,000
State	$ 1.50
County	6.70
City, town, or village	.....
School Dist. #1	12.00
School district #2	12.00
" " #4	14.00
Other districts Center	18.50
Dallas	10.00
Total rate	$.....

NOTE.—If security offered is payable from a *limited* ad valorem tax, the tax rates for debt purposes and operating purposes inside and outside of the tax limit should be shown separately in an attached statement.

6. Ad Valorem Tax Levies and Collections (last 2 fiscal years): Fiscal years ending ..... (For applicant's purposes) (Date) 193..

Taxes are due each ..... and become delinquent (Date)

each..... (Date)

Amount of current taxes levied	$.....	$.....
Amount of current taxes collected	.....	.....
Amount of delinquent taxes collected	.....	.....
Total amount of taxes collected	.....	.....

See Exhibit 157-6

7. Cash Receipts and Disbursements:

The District is newly organized, and has to date neither received nor expended any funds.

Fiscal years ending ..... (Date)

		193	193
Receipts—	Ad Valorem taxes	$.....	$.....
	Licenses, fines, fees, etc.	.....	.....
	State or county aid	.....	.....
	From sale of bonds	.....	.....
	From temporary loans	.....	.....
	Other receipts	.....	.....
	(Description)		
	Other receipts	.....	.....
	(Description)		
	Total receipts	$.....	$.....

Disbursements—Ordinary expenses	$.....	$.....
Bond payments	.....	.....
Interest payments	.....	.....
Temporary loans paid	.....	.....
Capital outlay	.....	.....
Other expenses	.....	.....
(Description)		
Other expenses	.....	.....
(Description)		
Total disbursements	$.....	$.....
Current surplus or deficit	$.....	$.....
Cash balance from previous years	.....	.....
Cash balance at end of year	$.....	$.....
Unpaid bills at end of year	$.....	$.....

NOTES:.—1. If sinking fund, utilty funds, special assessment fund or other funds are accounted for separately, attach similar statements for each fund.

2. If annual statements of receipts and disbursements which give substantially the information requested in this section already have been prepared, they may be attached in lieu of filling out section 7 above.

8. Have There Been Any Defaults or Postponements in the Payment of Principal or Interest? None If so, give the following information:

(a) Year of default	Kind of bonds	Reason	Amount of default Principal	Interest	Year paid	Amount still due
19....	.....	.....	$.....	$.....	19....	$.....
19....	.....	.....	$.....	$.....	19....	$.....
19....	.....	.....	$.....	$.....	19....	$.....

(b) What steps are being taken to remedy any existing defaults? .....

9. Amount of General Obligation Bonds Maturing During Next 5 Years:

Fiscal years ending .....
(Date)

	19....	19....	19....	19....	19....
Serial bonds	$.....	$.....	$.....	$.....	$.....
Term bonds	.....	.....	.....	.....	.....
Total	$.....	$.....	$.....	$.....	$.....

NOTE

1. See accompanying special instructions regarding *revenue-producing* projects and projects to be financed by *special assessment* bonds.

2. Attach brief general description of community, including information regarding railroads and main highways by which served, chief industries or commercial activities, products of surrounding country, and any other items of interest.

3. Attach statement concerning objections, if any, to project made by individuals, civic groups or other similar bodies.

AFFIDAVIT

R. D. Barry, being first duly sworn, says:

1. That the affiant has been authorized by the above-named applicant to furnish financial information to the Federal Emergency Administration of Public Works to support the application of said applicant, dated .....;

2. That the information supplied on the above form and in the attached exhibits and statement is true, correct, and complete to the best of his knowledge and belief.

.....

(signed) R. D. Barry

SEAL

Sworn to before me this 23rd day of November, 1935.

(signed) Pansy Perkins

Notary.

My commission expires Nov. 28, 1936.

EXHIBIT 157-1

The valuation of $2,428,000.00 will be increased some by the valuation of the public utilities located within the District. It is not possible at this time to segregate the valuation of these utilities which lie within the boundaries of the District.

EXHIBIT 157-6

Due to the fact that the County Collector does not make a practice of making an annual summary of the delinquent taxes, it is impossible to get these figures without going entirely through the tax books for the last two years. The District will be glad to assemble such information along this line as the Public Works Administration requires and will await the advices of the Public Works Administration.

EXHIBIT 157—NOTE 1

Revenues from the System

NUMBER OF CUSTOMERS: The proposed water system reaches approximately 604 possible customers. It has been assumed that there will be 480 customers the first year of operation and that the number of customers will increase at the rate of 20 per year, which means that

at the end of the twenty years the number of customers would have increased 79%. The population of Washington Township, of which this District is a part, was 2,369 in 1910, 3,911 in 1920, and 9,951 in 1930. The Township increased in population more than 400% in the 20-year period from 1910 to 1930. Consequently, we believe that an assumption of 79% increase in the number of customers in 20 years is conservative.

RATE SCHEDULE: The following schedule of rates has been set up governing the sale of water:

First	2,000 gallons per month	@	$0.75 per 1000 gallons
Next	3,000 " " "		.50 " " "
Next	15,000 " " "		.40 " " "
Next	30,000 " " "		.30 " " "
Next	50,000 " " "		.25 " " "
Excess			.20 " " "

Minimum Bill $1.50 per month

SALE OF WATER: Based on a careful study of the District and a comparison of the sale of water in similar small towns and districts, we have set up the following analysis of probable sales of water to a group of 500 customers:

No. of Customers	Monthly Bill Each	Monthly Bill Total	Use of Water Gallons per Month Each	Use of Water Gallons per Month Total
200	$ 1.50	$ 300.00	2,000	400,000
150	2.00	300.00	3,000	450,000
100	3.00	300.00	5,000	500,000
30	5.00	150.00	10,000	300,000
10	12.00	120.00	30,000	300,000
5	18.00	90.00	50,000	250,000
3	24.25	72.75	75,000	225,000
1	50.50	50.50	200,000	200,000
1	110.50	110.50	500,000	500,000
		$1,493.75		3,125,000
		Plus 15% waste		475,000
				3,600,000 gallons per month to purchase

Average bill about $3.00 per month.

Assuming a population of 4 per customer, the per capita use would be about 60 gallons per day.

This group of 500 customers includes two golf courses, two high schools, two grade schools, 30 stores, 17 filling stations, 35 tourist cabins (not counted as separate houses), 15 road houses, 7 dairies, and numerous large private estates.

OPERATING COSTS: We have made the following estimate of cost of operating the system, based on the group of 500 customers:

1 Superintendent	$100	per	month	$1,200	per	year
1 Bookkeeper and clerk	100	"	"	1,200	"	"
1 Laborer, part time	50	"	"	600	"	"
Office maintenance, light, heat, etc.	40	"	"	480	"	"
Office supplies, postage, etc.	50	"	"	600	"	"
Truck, 1000 mi/mo @ 5¢	50	"	"	600	"	"
Tools and supplies	30	"	"	360	"	"
Miscellaneous	30	"	"	360	"	"
				$5,400	"	"

5400/500 = $10.80 per customer per year

The cost of the 3,600,000 gallons of water estimated to be used each month by the group of 500 customers, according to the Kansas City Missouri rate, will be as follows:

2,000	gallons	at	$0.25	$0.50
15,000	"	"	.23	3.45
15,000	"	"	.21	3.15
22,500	"	"	.20	4.50
22,500	"	"	.19	4.28
37,500	"	"	.17	6.38
37,500	"	"	.16	6.00
75,000	"	"	.15	11.25
150,000	"	"	.13	19.50
375,000	"	"	.11	41.25
2,848,000	"	"	.09	256.32
				356.58 x 12 = $4,278.96 per year

The cost of pumping this water against a total head of approximately 100 feet, assuming a 60% efficiency of the pumping equipment and a power cost of 3 cents per kilowatt-hour, will be approximately $64.80 per month, or $777.60 per year. The total cost of the water will be

Water purchased	$4,278.96 per year
Water pumping	777.60 " "
Total	$5,056.56 " "

or about $10.11 per customer per year.

OPERATING SURPLUS: The average annual revenue per customer is estimated at $36.00. The operating expenses are estimated to be $10.80 per year for office and labor, and $10.00 per year for water and pumping, or a total of $20.91 per year. This leaves an operating surplus of approximately $15.00 per customer per year.

PAYMENT OF REVENUE BONDS: The following Table shows for each year during the life of the revenue bonds the estimated number of customers, the operating surplus each year at $15.00 per customer per year, the fixed charges, the balance at the end of the year, and the accumulated balance each year during the period. The schedule of bond maturities has been arranged so as to make the fixed charges per customer somewhat near constant during the life of the loan:

APPLICATION OF OPERATING SURPLUS TO RETIREMENT OF $84,000.00 in 4% REVENUE BONDS

Year	Number of Customers	Operating Surplus at $15./Yr.	Fixed Charges Interest 4%	Fixed Charges Principal $84,000.	Fixed Charges Total	Balance at End of Year	Accumulated Balance
1	480	$7,200.	$3,360.	—	$3,360.	$3,840.	$3,840.
2	500	7,500.	3,360.	—	3,360.	4,140.	7,980.
3	520	7,800.	3,360.	$1,000.	4,360.	3,440.	11,420.
4	540	8,100.	3,320.	1,000.	4,320.	3,780.	15,200.
5	560	8,400.	3,280.	2,000.	5,280.	3,120.	18,320.
6	580	8,700.	3,200.	2,000.	5,200.	3,500.	21,820.
7	600	9,000.	3,120.	3,000.	6,120.	2,880.	24,700.
8	620	9,300.	3,000.	3,000.	6,000.	3,300.	28,000.
9	640	9,600.	2,880.	4,000.	6,880.	2,720.	30,720.
10	660	9,900.	2,720.	4,000.	6,720.	3,180.	33,900.
11	680	10,200.	2,560.	5,000.	7,560.	2,640.	36,540.
12	700	10,500.	2,360.	5,000.	7,360.	3,140.	39,680.
13	720	10,800.	2,160.	6,000.	8,160.	2,640.	42,320.
14	740	11,100.	1,920.	6,000.	7,920.	3,180.	45,500.
15	760	11,400.	1,680.	7,000.	8,680.	2,720.	48,220.
16	780	11,700.	1,400.	7,000.	8,400.	3,300.	51,520.
17	800	12,000.	1,120.	7,000.	8,120.	3,880.	55,400.
18	820	12,300.	840.	7,000.	7,840.	4,460.	59,860.
19	840	12,600.	560.	7,000.	7,560.	5,040.	64,900.
20	860	12,900.	280.	7,000.	7,280.	5,620.	70,520.
Totals		$201,000.			$130,480.	$70,520.	

The above Table shows that the anticipated earnings will retire the revenue bond issue in 20 years and show a surplus of approximately $70,520.00.

EXHIBIT 157—NOTE 2

Description of Area to Be Served

This suburban area immediately adjoins Kansas City Missouri on the south and southeast, occupying some of the most sightly territory in Jackson County, in the main being high and well drained.

The territory contains the communities of Dodson, Holmes Park, the Rose Hill suburban residential section, Oakwood Country Club, the town of Hickman Mills and adjoining residential district, South Ridge Country Club, the town of Grandview and adjoining residential district, with a general residential development in between all of the above communities.

All of the above territory is made easily accessible to the heart of the business district of Kansas City, due to the fact that this area lies on both sides of U.S. Highway No. 71, the main north and south highway of the State, which is now being widened through this territory and many miles beyond. It is further criss-crossed by many of the county concrete roads recently completed under Jackson County's $6,000,000.00 road improvement, some of the main roads being Blue Ridge Road, Blue Ridge Boulevard, 87th Street, Colburn Road, Hickman Mills-Lee's Summit Road and High Grove Road; and it is also well supplied with many macadam and asphalt roads under County supervision and maintenance; all of which makes this territory at no place farther than 35 minutes' drive to the heart of the Kansas City business district, easily accessible to any of the city residential districts and to most of the industrial districts.

For many years this territory has been one of the richest agricultural sections in the country, practically all of it having been either in farm or orchards. The transition of this territory from farms and orchards to a popular suburban territory is attested by the growth as shown by the U.S. Bureau of Census reports from Washington Township, the best part of the growth occurring in this area, namely, a growth of two and one-half times from 1920 to 1930, practically all of this growth occurring without the benefits of modern improvements, which have occurred

since 1930. In recent years this territory has been served with gas by the Panhandle-Eastern Pipe Line Company; its electric service has been greatly improved and serviced with reduced rates by the Kansas City Power and Light Company, and the Missouri Public Service Company; its telephone system has been greatly improved and is now on the new modern automatic telephone system; it is well served with public schools and two modern high schools; its transportation, besides being improved with modern highways for private use, is further served by the Martin Coach Line, the Crown Coach Company, Kansas City Southern Railroad, Missouri Pacific Railroad, and the Frisco lines. It is now in process of intensive development. This territory is developing along varied lines, from expensive country estates and suburban homes to subsistence farms with tracts of from one to ten acres. The past record of this district proves conclusively that it is destined to constitute a larger, better settled and more improved suburban area year by year. At the present time there are practically no industrial or manufacturing plants in the district, but the opportunity for such development is ample, particularly along the railroads in the lower portions.

EXHIBIT 157—NOTE 3

There have been no formal objections to the project on the part of organizations, civic groups, or similar bodies.

FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS

HAROLD L. ICKES, ADMINISTRATOR
WASHINGTON

Legal Information Supplied by Applicant

State .....

State File No. .....
(Not to be filled in by applicant)

1. Exact corporate name of applicant Jackson County Public Water Supply, District No. 1.

2. Date of organization or incorporation October 10, 1935.

3. Reference to any Constitutional, statutory, and charter authority pursuant to which the applicant was organized Missouri Statutes Annotated, 1935, Article 7, Chapter 32, Section 4962a to Section 4962s inclusive; Laws of Mo. 1935, p. 327.

4. Has applicant a special charter? Yes. If so, if charter is set out in statutes or Constitution, cite references thereto was incorporated by decree of the Circuit Court. Article 7, Chapt. 32, Secs. 4962a to 4962s inclusive, Mo. Statutes Anno. 1935 (Laws of Mo. 1935, page 327).

   If charter is not set out in statutes or Constitution, furnish a copy of such charter together with a certificate from proper officer to the effect that such copy is a true, complete, and accurate copy of the present charter including all amendments to date.

5. Name and address of applicant's legal representative with whom correspondence should be conducted Jerome Walsh, 1201 Bryant Bldg., Kansas City, Missouri.

6. Applicant's population in 1910 .....; in 1920 .....; in 1930 .....; and present estimated population 3,500.

7. Reference to Constitutional, statutory, and charter authority empowering the applicant to construct the proposed project Article 7, Chapt. 32, Secs. 4962a to 4962s inclusive, Mo. Statutes Annotated, 1935 (Laws of Missouri 1935, page 327).

8. Reference to Constitutional, statutory, and charter authority empowering the applicant to issue the proposed obligations and to secure them in the manner proposed Section 4962m of Article 7, Chapter 32, Missouri Statutes Annotated, 1935 (Laws of Mo. 1935, p. 327).

9. Description of project in language of Constitution, statutes, or charter authorizing the construction and financing of such project in the manner proposed. See point answered under Numbers 7 and 8.

10. Reference to Constitutional, statutory, or charter debt limitation, Section 12 of Article X of Constitution of State of Missouri, Article 7, Chapter 32, Section 4962m, Missouri Statutes Annotated, 1935 (Laws of Missouri 1935, page 327).

11. State:

(a) Year and amount of assessed valuation (19....) on which debt limit is computed		$2,500,000.
(b) Gross borrowing capacity	(10%)	250,000.
Less—		
(c). Outstanding bonded and other debt (less deductions and exemptions) subject to limitation (itemize)		None
(d) Net borrowing capacity		$ 250,00.

12. State the deductions which are allowed in ascertaining net debt, giving Constitutional, statutory, and charter authority—There is no deduction. See Section 12 of Article X of Constitution of State of Missouri.

13. References to Constitutional, statutory, or charter tax limitations, Section 12, Article X of Constitution of State of Missouri, Article 7, Chapter 32, Section 4962m, Missouri Statutes Annotated, 1935. (Laws of Mo. 1935, page 327).

14. State when assessed valuation becomes final by equalization or otherwise, citing Constitutional, statutory, and charter references Article 3, Chapter 59, R.S.Mo. 1929; also see Section 12, Article X of Constitution of State of Missouri, providing "no county * * * political corporation or sub-division of the state shall be allowed to become indebted * * * nor in cases requiring such assent, shall any indebtedness be allowed to be incurred to an amount including existing indebtedness, in the aggregate exceeding 5% percentum on the value of the taxable property therein, *to be ascertained by the assessment next before the last assessment for state and county purposes, previous to the incurring of such indebtedness.*" * * *

15. If proposed obligations are subject to limit which is not computed on basis of assessed valuation, describe such other basis and set out appropriate figures so as to indicate net borrowing capacity on such other basis. Limitation of debt computed only on basis of assessed valuation.

16. State, giving authority:

(a) What are remedies of holder of obligations in the event of default? In the case of General Obligation bonds, the Statute (Section 4962m Mo. Statutes Annotated, 1935, Article 7, Chapter 32, provides that the directors at the time of issuing the bonds shall provide for the levy of a direct tax on all the property in the District. The holders may compel the levy and collection of this tax in the event of default. (Laws of Mo. 1935, p. 327).

The Act (Section 13) (Section 4962m Mo. Statutes Annotated, 1935, Article 7, Chapter 32), provides that in the case of Revenue or Special Obligation bonds

the directors shall covenant to fix, maintain and collect rates for water and water service adequate to meet the obligation of such bonds, both as to principal and interest. The holder may compel the fixing of such rates. All net revenues from water sales are pledged to pay such bonds. (Laws of Missouri 1935, page 327).

(b) How may such remedies be enforced? In the case of both General Obligation and Special Obligation bonds, the manner of enforcing the remedy of the holder would be by proceeding in mandamus to compel the levy and collection of a tax sufficient to service the bonds, and, in the case of Special Obligation bonds, to proceed in mandamus to compel the directors to fix water rates which would produce revenue to service the Special Obligation bonds. State ex rel. Frazier v. Holt County Court, 135 Mo. 533; 56 Corpus Juris, 748.

The undersigned attorney at law states:

1. That he has been authorized by the above-named applicant to furnish legal information to the Federal Emergency Administration of Public Works to support the application of said applicant, dated November 23, 1935;

2. That the information supplied on the above form and in the attached exhibits and statements is in his opinion true and correct.

(signed) Jerome Walsh
Attorney at law.

Date: 11/23/35

APPENDIX M

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

The undersigned, Charles W. Hess, being first duly sworn upon his oath, states:

1. That he is and has been a practicing attorney in the above county and state for over 30 years. That he has been the General Counsel for Jackson County Public Supply District No. 1 for over 12 years, and during that time has handled the bond issues and the drafting of all contracts for the District and towards these purposes has had to familiarize himself with previous bond issues and previous contracts, and of all the financial statements of said water district; that in performing said legal services he has derived his information from the district's records, from information contained in the files of bond underwriters handling the various bond issues of the district, and from the financial records of the district; that the facts hereinafter described are according to affiant's best recollection, information and belief.

2. Affiant states that the first issue of revenue bonds of the Public Water Supply District was in the amount of $84,000 and issued in about 1937. This issue was privately placed, as was the first issue of general obligation bonds of the District in approximately the same amount. Later the District issued $180,000 in refunding revenue bonds in 1952, and still later in 1958 the District issued an additional $250,000 in revenue bonds. Some of the later issues are still outstanding.

3. On October 2, 1936 Kansas City, Missouri entered into a Water Supply Contract with Jackson County Public Water Supply District No. 1 to furnish the District, and did furnish the District, water for a 20-year period. During the years between 1956 and 1960, Kansas City, Missouri was the District's sole supplier, but without a written contract; and in January, 1960 a new written contract was entered into. Later in July of 1961, a 20-year Water Supply Agreement was entered into between Kansas City, Missouri, and the District providing for a water supply until 1981, and that contract is still in full force and effect. Most of the facts set forth in this Affidavit are part of the record in this case, and many of them are substantiated by reference to Appendix H (R. Exhibit 13), the annual audit of the Water District dated October 31, 1962.

Further affiant saith not.

/s/ Charles W. Hess
Charles W. Hess

Subscribed and sworn to before me this 14 day of June, 1967.

/s/ Dorothy Griffith
Notary Public

My commission expires: 10-21-67.